THE DIGEST OF CRIMINAL CASES

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DIGEST OF CRIMINAL CASES.

A.

Abkari—

ABKARI ACT (BOMBAY) (BOM. ACT V. OF 1878), SS. 43 (*b*), 47—*Cocaine—Illegal possession — Removal — Transportation of cocaine.*] Accused No. 1 who was illegally in possession of cocaine brought it from his room and gave it to accused No. 2 who stood opposite his house. The latter carried it to some distance and delivered to a Purdeshi. The two accused were, under these circumstances, charged with transporting cocaine, an offence punishable under s. 43 (*b*) of the Bombay Abkari Act, 1878. *Held*, that the accused cannot be convicted under s. 43 (*b*) of the Bombay Abkari Act, 1878 inasmuch as the accused's offence consisted not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act. s. 43, clause (*b*), seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place.—EMPEROR *v.* BALVANTRAO ANANTRAO, I. L R., 34 Bom. 342.

Accomplice—

1. ACCOMPLICE—*Corroboration of* — See Evidence Act, ss. 25, 114 I. L R., 35 Mad. 397.

2. ACCOMPLICE—*Spy or detective associating with a wrong doer for the purpose of discovery and disclosure of an offence—Necessity of Corroboration—Evidence Act (I. of 1872), ss. 114, 133*] A person who makes himself an agent for the prosecution with the purpose of discovering and disclosing the commission of an offence, either before associating with wrong doers or before the actual perpetration of the offence, is not an accomplice but a spy, detective or decoy whose evidence does not require corroboration, though the weight to be attached to it depends on the character of each individual witness in each case. But a person who is associated with an offence with a criminal design, and extends no aid to the prosecution till after its commission is an accomplice requiring corroboration. *Rex* v. *Despard*, 28 How. St. Tr. 346, *Reg.* v. *Dowling*, 3 Cox C. C. 509, *Reg.* v. *Mullins*, 3 Cox C. C. 526, *Rex* v. *Bickley*, 2 Cr. App. Rep. 53; 73 J. P. 239, *Reg.* v. *Shankar Shobag*, Ratan unreported Cr. Ca. 428, approved of. *Queen-Empress* v. *Javecharam*, I. L. R., 9 Bom. 363, distinguished by Holmwood J. and dissented from by Doss J. *Grimm* v. *United States*, 156 U. S. 604. *State* v. *McKean*, 36, Iowa 343, 14 Am. Rep. 530, *State* v. *Brownlee*, 84 Iowa 783; 51 N. W. 25, *Wright* v. *State*, 7 Tex Ct. App. 574; 32 Am. Rep. 599, *People* v. *Bolanger*, 71 Cal. 17; 11 Pac. 799, *People* v. *Farrel*, 30 Cal. 316, *Commonwealth* v. Downing, 4 Gray 29, *Commonwealth* v. *Baker*, 155 Mass. 289; 29 N. E. 512, *State* v. Baden 37 Minn. 212; 34 N. W. 24, *People* v. *Noelke*, 94 N. Y. 137, *Campbell* v. *Commonwealth*, 84 Penn. 187, *O'Grady* v. *People*, 42 Cal. 512; 95 Pac. 346, *Andrews* v. *United States*, 162 U. S. 420, *Shepard* v. *United States*, 164 Fed. 584, and *Connor* v. *People*, 32 Am. St. R. 308, referred to by Doss J.—EMPEROR *v.* CHATURBHUJ SAHU, I. L. R., 38 Cal. 96.

Acquiescence—

1 ACQUIESCENCE—*Order of demolition of unauthorised erections — Disobedience to such order—Negotiations for compromise—Re-assessment of the whole premises, including the unauthorized portions, and receipt of rates and taxes for the same—Calcutta Municipal Act (Beng III. of 1899) ss. 449, 580.*] Where, after the passing of an order of demolition under s 449 of the Calcutta Municipal Act, negotiations have been going on between the person directed to demolish an unauthorized erection and the Corporation, the receipt of rates and taxes by the latter, on re-assessment of the whole premises, including the portions objected to, during the period of such negotiations, is not an acquiescence on their part in the continued disobedience to the order so as to disentitle them from proceeding with the prosecution for such disobedience after the failure of the negotiations.—LACHMI NARAYAN MAHTO *v.* CORPORATION OF CALCUTTA, I. L. R., 37 Cal. 833.

2. ACQUIESCENCE—*Unauthorised erection—Calcutta Municipal Act (III. B. C. of 1899), ss. 449, 580.*] The accused built his house not according to the plan sanctioned by the Municipality. An order of demolition was passed pending the negotiations between him and the Corporation and the

Acquiescence (*contd.*)—

Corporation received taxes after re-assessment: *held* that this did not amount to an acquiescence on the part of the Corporation in continuous disobedience to the order for demolition.—BHOLARAM *v.* CORPORATION OF CALCUTTA. I. L. R., 37 Cal. 837.

Acquittal—

1. ACQUITTAL—*Criminal Procedure Code, ss 235 (1) (2), 403—Penal Code, ss. 176, 201, 202.*] *Held* that where the accused was prosecuted and acquitted of an offence under ss. 201, 202 of the Penal Code, he could not afterwards be convicted under s. 176 of the Penal Code on the same facts, s. 403 of the Criminal Procedure Code being a bar to such subsequent trial.—SARBEKHAN *v.* EMPEROR, 10 C. W. N 518.

2. ACQUITTAL—*Criminal Procedure Code, ss. 403, 206, 237—Acquittal of co-accused, if bar to trial—Penal Code, ss. 380, 411.*] A, S, and H were charged under s. 380 of the Penal Code. A and S were put on their trial and were acquitted. Subsequently some of the stolen properties having been found in the house of H, H was tried and convicted under s. 411 of Penal Code *Held* that the trial and acquittal of A and S did not operate in favour of H as a bar to a prosecution against him under s. 411 of the Penal Code. *Bishun Das Ghose* v. *Emperor*, (7 C. W. N. 493) distinguished.—DEPUTY LEGAL REMEMBRANCER *v.* HATIM MOLLAH, 10 C. W. N 1031.

3. ACQUITTAL—*Previous acquittal, plea of—Acquittal of some accused charged with rioting, grievous hurt and murder—Liability of others to be tried for the same offences—Prosecution story found to be false as to the grievous hurt and murder—Criminal Procedure Code (Act V. of 1898), s. 403.*] An acquittal of some of the accused on charges of rioting armed with deadly weapons, grievous hurt and murder, is no bar, under s. 403 of the Criminal Procedure Code, to the trial of others concerned in the same offences, where the Sessions Judge did not disbelieve the fact of a rioting having occurred, while one of the Assessors believed the whole story.—*Bishun Das Ghosh* v. *King-Emperor*, 7 C. W. N. 493, distinguished.—KOKAI SARDAR *v.* MEHER KHAN, I. L. R., 37 Cal. 680.

4. ACQUITTAL. See CRIMINAL PROCEDURE CODE, S. 42, I. L. R., 34 All. 115

5. ACQUITTAL—*cAquittal under s. 182 of the Penal Code—Subsequent complaint under s. 500, by the person defamed in respect of the same statement—Subsequent prosecution not barred—Criminal Procedure Code (Act V. of 1898) s. 403.*] An acquittal under s. 182 of the Penal Code in respect of false information contained in a petition to the manager of an estate is no bar to a subsequent prosecution for defamation under s. 500 of the Penal Code, on the same statements. *Sharbekhan Gohain* v. *Emperor*, 10 C. W. N. 85, distinguished.—RAMSBBAK LAL *v.* MUNESWAR SINGH, I. L. R., 37 Cal. 604.

Adjournment—

ADJOURNMENT—*Criminal Procedure Code, s. 344 Costs.*] *Held* an order upon the accused to pay costs of an adjournment of the case against him is illegal.—BROWN *v* CHANDA SINGH, 6, P. R. 1906, Cr.

Advocate—

ADVOCATE—Two orders of the High Court of the N.-W. P. the one being an order *nisi* calling on the Appellant, a Barrister and Advocate practising in the Court, to show cause why he should not be suspended from the practice of his profession as an Advocate of the Court, and the other order declaring him guilty of gross professional misconduct, and suspending him from practice for five years, on appeal, as to the rule on which the first order was made discharged, and the second order reversed; the Judicial Committee being of opinion that, though the Appellant had been guilty of a grave irregularity and deserving of censure, yet the facts proved did not amount to that *mala praxis* on which the High Court, having regard to the position and functions of an advocate in the North-Western Provinces, could fairly found any proceedings of personal character.—THOMAS NEWTON *v.* THE HON C. A. TURNER AND OTHERS, 14 M. I. A. 261.

Adulteration—

ADULTERATION—*Adulterated ghee, sale of—Master and servant—Sale by servant or partner—Liability therefor of master or co-partner of a firm—Calcutta Municipal Act (Beng. III. of 1899), ss. 494 and 574.*] Section 495 of the Calcutta Municipal Act imposes a positive prohibition against the sale of adulterated articles of food or drink, and covers the case of an agent or firm as well as that of a master and servant. *Brown* v. *Foot*, 17 Cox. C. C. 509, followed.—SEW KARAN *v* CORPORATION OF CALCUTTA, I. L. R., 39 Cal. 682.

Appeal—

1. APPEAL—*Criminal Procedure Code, ss. 408, 435—Two Sessions divisions in one district.*] Where there are two sessions divisions in one district and the Magistrate, against whose decision, an appeal has to be preferred has his head-quarters

Appeal (*contd.*)—

within the local limits of one of the sessions divisions, appeals from such Magistrate's decisions lie to such Sessions Court, irrespective of the place where the offence was committed. The word "situate" in s. 435 of the Criminal Procedure Code means fixed or located and when applied to a Court, refers to the place where the Court ordinarily sits—MUNDIATH VALLA AMBU PODAVAL *v.* KING-EMPEROR, 16 M. L. J. 444.

2. APPEAL—*Crimininal Procedure Code, s. 421—Summary rejection of appeal.*] Where a petition of appeal signed by a pleader is presented to a Magistrate by the party in person, the appeal cannot be dismissed without giving the pleader a reasonable opportunity to appear. Where the conviction is based on the evidence of witnesses whose credibility is impeached by the accused on reasonable grounds, the appeal should not be summarily rejected under s. 421 of the Code of Criminal Procedure without sending for the records.—RANGACHARLU *v.* EMPEROR, I. L. R, 29 Mad. 236.

3. APPEAL — *Criminal Procedure Code, s. 421—Summary dismissal of Appeal—Pleader not heard—Jail appeal*] Where an appeal was filed before the Sessions Judge by a convict from Jail and also a legal practitioner filed an appeal on his behalf. *Held* that the Sessions Judge should not dismiss the appeal from Jail summarily without hearing the legal practitioner. *Queen-Empress* v. *Nanhi* (I. L. R., 17 All. 241) followed.—BHAWANI DIN *v.* KING-EMPEROR, 3 A. L. J. 693.

4. APPEAL — *Criminal Procedure Code ss. 423 (b), 528—"Order him to be re-tried by Court * * * subordinate"—Jurisdiction of appellate court to try the case itself.*] The words "order him to be re-tried by a Court * * * subordinate to such appellate court" in s 423 (*b*) of the Criminal Procedure Code, when read with s. 528 are not to be taken as words of limitation, and do not exclude the appellate court from itself trying the offender, if the offence is one within the ordinary jurisdiction of the appellate Court.—PUBLIC PROSECUTOR *v.* MANIKKA GRAMANI, 16 M. L. J 546

5. APPEAL — *Criminal Procedure Code ss. 423 (d), 517—Restoration of property*] Under s. 423(*d*) of the Criminal Procedure Code, an appellate court is entitled, in an appeal from a conviction and in other cases, to make any amendment or any consequential or incidental order that may be just and proper. An order by the appellate court directing restoration of property, which was found to have belonged to the

Appeal (*contd.*)—

complainant, but which was not ordered to be restored to him by the lower court is a consequential or incidental order within the meaning of s. 423(*d*).—GOPI NATH *v.* EMPEROR, 3 A. L. J. 770.

6. APPEAL — *Criminal Procedure Code, s. 439—Revision—Summary dismissal of appeal by Sessions Judge—Criminal Breach of Trust.*] G entrusted some money for safe custody to I who put it into a box, locked it and kept the key with him. This box was used by C as bed during the greater part of the night. Next morning, the box was found to have been forced open and the money stolen. Neither I nor C was in continuous possession of the box from the time that the money was deposited in it. I and C were convicted under s. 406 of the Penal Code. An appeal against the conviction was summarily dismissed by the Sessions Judge. *Held*, on revision, that the Sessions Judge was wrong in dismissing the appeal summarily inasmuch as the facts disclosed could not support a conviction. In a case of this kind, where there is no evidence of eye witness and where the stolen property is never found, the possibility of any other person being the culprit must be excluded before the accused can be convicted.—ISWAR CHANDRA DAS *v.* EMPEROR, 10 C. W. N. 446

7. APPEAL—*Right of reply—Duty of Appellate Court to determine accomplice character of Evidence—Criminal Procedure Code, (Act V. of 1898), s. 421—Practice*] The appellant has a right of reply to the Crown on the hearing of an appeal *Promoda Bhusan Roy* v. *Emperor*, 11 C. W. N. xlii, followed. The Appellate Court is bound to find specifically whether witnesses said to be accomplices are so or not, and to weigh their evidence accordingly.—ANANAT SARDAR *v.* NAGENDRA BISWAS, I. L. R., 38 Calc. 307.

8. APPEAL—Appeal to the Queen in Council allowed from a judgment on a conviction of the Supreme Court at Calcutta, in a case for murder.—NGA HOONG AND OTHERS *v.* THE QUEEN, 7 M. I. A. 72.

9. APPEAL—The Bombay Charter of the 8th December 1823 (granted in pursuance of the powers conferred to the Crown by 4 Geo. IV., c. 71), after providing "That in all indictments, informations, and criminal suits and causes whatsoever, the said Supreme Court of Judicature at Bombay shall have the full and absolute power and authority to allow or deny the Appeal of the party pretending to be aggrieved," proceeds thus: "And we do hereby also reserve to ourselves, our heirs and successors, in our or their Privy Council, full

Appeal (*contd.*)—

power and authority, upon the humble petition of any person or persons aggrieved by a judgment or determination of the Supreme Court of Judicature at Bombay, to refuse or admit his, her or their Appeal thereupon, upon such terms and under such limitations, restrictions, and regulations, as we or they shall think fit, and to reform, correct, or vary, such judgment or determination as to us or them shall seem meet." Upon a petition for leave to appeal from a conviction for felony; *held* by the Judicial Committee of the Privy Council, that there was no power reserved to the Crown by the Charter, to allow appeals in criminal cases, such appeal being confined to civil cases only.—THE QUEEN *v.* EDULJEE, 3 M I. A. 468.

10. APPEAL—Under the Bombay Charter of Justice, the Supreme Court at Bombay is invested with full and absolute power, to allow or deny an Appeal in criminal cases, and no power is reserved to the Crown by such Charter to grant leave to appeal in such cases.—(THE QUEEN *v.* ALLOO PAROO, 3 M. I. A. 488.)

Appellate Court—

APPELLATE COURT—*Power to alter conviction under s. 147, Penal Code, to one under s. 323, when the common object charged was other than to cause hurt—Issue of Rule and order for bail by the High Court—Duty of the Magistrate on receiving intimation of the same by telegram from Counsel—Delay in transmitting the Bail orders—Criminal Procedure Code (Act V. of 1898), s. 423.*] The Appellate Court cannot alter a conviction of rioting under s. 147 of the Penal Code, with the common object to ejecting the complainants from their homestead lands, to one under s. 323 thereof. When a Rule is issued by the High Court and the proceedings stayed, and, *a fortiori*, when an order for bail is made the Magistrate, on receiving reliable information thereof, such as a telegram from the Counsel in the case, is bound to act on it immediately, though he has not received the High Court's orders at the time. *Ratnessari Pershad* v. *Empress*, 2 C. W. N. 498, followed. All bail orders must be issued from the office of the High Court on the same day they are passed, irrespective of the written order on the record.—LAL MOHAN MANDAL *v.* KALI KISHORE BHUIMALI, I. L. R., 38 Calc. 293.

Arrest without Warrant—

ARREST WITHOUT WARRANT—*Criminal Procedure Code, s. 56—Arrest by Chowkidar, Resistance to—Penal Code, s. 225B—Village Chowkidari Act (Ben. Act VI. of 1870), s. 39.*] When a person liable to be arrested without a warrant is arrested by a Chowkidar on the authority of a written order of an officer in charge of a police-station, any person resisting such arrest is guilty under s. 225B of the Penal Code, inasmuch as the Chowkidar being an officer subordinate to an officer in charge of a police-station, within the meaning of s. 56 of the Criminal Procedure Code, such arrest is legal.—BAHUBAL SIRCAR *v.* EMPEROR, 10 C. W. N. 287.

Arms Act—

1. ARMS ACT, S. 4—*Definition—Ammunition—Empty cartridge cases.*] *Held* that Indian empty cartridge cases are ammunition within the meaning of s. 4 of the Indian Arms Act, 1878. *King-Emperor* v. *Ibrahim*, 7 Bom. L. R., 474, followed.—EMPEROR *v.* BALDEO SINGH, I. L. R., 32 All. 152.

2. ARMS ACT, S. 19 (*c*)—*Intention not necessary to constitute offence.*] An offence under s. 19 (*c*) of the Arms Act is committed when a person enters British India with a weapon he is not lawfully entitled to possess in this country. It is not necessary that there should be any particular intention in the mind of the offender to complete the offence.—*Re* MAHOMED ISMAIL ROWTHER, I. L. R., 35 Mad. 596.

B.

Babashahi Coin—

BABASHAHI COIN—*Criminal Procedure Code (Act V. of 1898), s. 517—Disposal of stolen property on conviction of the theft—Legal tender—Customary coin.*] A witness for the prosecution in a case of theft produced a sum of money in Babashahi (Baroda) coin (part of the stolen property) which the accused had paid to him in satisfaction of a debt. The accused was convicted, and at the close of the trial the Court, under s. 517 of the Criminal Procedure Code (V. of 1898), ordered the money to be restored to the complainant from whom it had been stolen. *Held* that the order was right. The stolen coins were not current coin of the realm, and was neither by Statute nor by the law of merchants in British India a legal tender. The property in them did not therefore pass by mere delivery, but remained in the complainant. *Collector of Salem* (7 Mad. H. C. R. 233) and *Empress* v. *Joggessur Mochi* (I. L. R., 8 Cal. 379) distinguished.—*In re* MATHUR LALBHAI, I. L. R., 25 Bom. 702.

Bail—

1. BAIL—*Release on bail of a person convicted by Sessions Court of Madras pending appeal to Privy Council—Juris*

Bail (*contd.*)—

diction of High Court.] A person was, at a Criminal Sessions held in Madras, convicted of certain offences and sentenced to imprisonment and fine. Upon a certificate being granted by the Advocate-General under s. 26 of the Letters Patent, the High Court reviewed the conviction and reduced the sentence. The accused obtained from the Judicial Committee of the Privy Council special leave to appeal, and also applied to be released on bail; but the Judicial Committee expressed the opinion that the latter application should be decided by the Madras High Court. Upon application being made accordingly to the Madras High Court, *held* that the High Court had jurisdiction to make an order releasing the accused on bail pending the decision of the Privy Council; and that, having regard to the rule laid down by the Judicial Committee in *Ex-parte Carew* (1897, A. C., 719), as to the circumstances under which an appeal in a criminal matter will be admitted by the Privy Council, the accused ought to be released on bail in the present case—QUEEN-EMPRESS *v.* SUBRAHMANIA AYYAR, I. L. R., 24 Mad 161.

2. BAIL—*Ground for granting or refusing—Remand to custody—Criminal Procedure Code (Act V. of 1898), ss. 344, 497 and 498.*] High Court in exercising its discretion under section 498 of the Criminal Procedure Code should not confine its attention only to the question, whether the prisoner is likely to abscond or not. There may be other circumstances, which may also affect the question of granting bail to accused persons charged with crimes of a grave character.—If a person is accused before a Magistrate of a non-bailable offence then, unless he considers that there are no reasonable grounds for believing him to be guilty, he must refuse bail, though he may be certain that the accused will stand his trial. It is the right of an accused to demand that the charges against him should be tried without any unreasonable delay, and such delay will dispose the High Court to grant bail. Where a police officer of superior rank deposed that he had evidence, which he believed, implicating the accused, and swore also to the truth of the first information, which alleged association of the accused in certain places and stated that the police had in their possession incriminating correspondence between the accused and a secret society in Calcutta, it was *held* that there was sufficient evidence for a remand under section 344 of the Code, but that there had been unreasonable delay as regards the

Bail (*contd.*)—

prisoners, who had been in custody for about six weeks, though not in the case of those who were in jail for three weeks.—NARENDRA LAL KHAN *v.* EMPEROR, I. L. R., 30 Cal. 166.

3. BAIL—*Bail, Grounds for grant or refusal of—Remand to custody—Reasonable evidence of prisoner's guilt—Criminal Procedure Code (Act V. of 1898), ss. 344, 497 and 498.*] *Held per* MITRA, J. (Coxe J. *diss.*) that the main question for consideration in determining matters of bail is whether there are reasonable grounds for believing the accused guilty of the offences charged. Other considerations must also arise in deciding this question, and one of these, which has always guided English and Indian Courts, is whether there are any grounds for supposing that the accused would abscond. Under s. 497 of the Criminal Procedure Code an accused should ordinarily be released on substantial bail until reasonable grounds are made out for presuming his guilt. *In re Johur Mull*, 10 C. W. N. 1093 followed.—If after a remand incriminating evidence is not adduced, and if the prosecution has already had sufficient time to adduce such evidence, the Court will reasonably conclude that such evidence is not forthcoming at the time. It should then under section 497, sub-section 2, release the accused on bail, whatever be the nature of the offence, though the preliminary enquiry should proceed. *Manikam Mudali* v. *Queen*, I. L. R., 6 Mad. 63 followed.—Whether there are reasonable grounds or not must be decided judicially, that is to say, there should be some tangible evidence on the record on which, if unrebutted, the Court can conclude that the accused might be convicted. The statement by a witness that he has seen a certain act of an incriminating character done by the accused might be sufficient. But if there be no evidence whatsoever, or evidence of a very flimsy character on the face of it, the inference will be, after a reasonable time has elapsed since the beginning of the enquiry, that there are no reasonable grounds for supposing the accused to be guilty. The prosecution must, however, have a fair opportunity of adducing evidence of a really incriminating nature. At all events, the first information report should indicate with sufficient exactness, the character of the evidence likely to be forthcoming.—The detention of an accused under trial is not intended to be penal, but its object is to secure attendance. The gravity of the offence and some evidence of its perpetration by the accused will, however,

Bail (*contd.*)—

justify detention.—JAMINI MULLICK *v.* EMPEROR I. L. R., 36 Cal. 174.

4. BAIL—*Criminal Procedure Code, s. 498.*] In a non-bailable case, the accused ought to be released on bail until such evidence are adduced that the Magistrate will find that reasonable grounds have been made out for believing that he is guilty.—JOHUR MULL, *In re*, 10 C. W. N. 1093

5. BAIL—*High Court, jurisdiction of, to grant bail—Grounds of bail—Sufficient cause for further inquiry into guilt of accused—Undue delay—Taking cognisance—Application of special procedure to the case—Power of the Lieutenant-Governor—Criminal Procedure Code (Act V. of 1898) ss 190, 497, 498—Criminal Law Amendment Act (XIV. of 1908) ss. 2, 12, 14 (1)*]. The power of the High Court to grant bail "*in any case*" under s. 498 of the Criminal Procedure Code is not affected by Act XIV. of 1908, but the Court ought, in the exercise of its discretion, to take into consideration the limitation imposed by s. 12 of the latter. The High Court refused bail where it appeared from the record and the Magistrate's explanation that there was cause for further inquiry into the case against the petitioner, and that there had been till then no undue delay in the proceedings. Where a police report of a dacoity was submitted to the Sub-Divisional Officer of Diamond Harbour on the 24th April 1909, the date of the dacoity, and the case was subsequently withdrawn by the District Magistrate to his own file, and on the 20th January, 1910, an order was made by the Lieutenant-Governor in terms of s. 2 of Act XIV. of 1908, applying the provisions of Part I. to the case:—*Held*, that the latter Magistrate had taken cognizance, and that the Lieutenant-Governor had power to make the order.—EMPEROR *v.* SOURINDRA MOHAN CHUCKERBUTTY, I. L. R., 37 Cal. 412.

6. BAIL—*Power of Sessions Judge to grant bail in cases to which special procedure has been applied—Criminal Procedure Code (Act V. of 1898) ss. 497, 498—Criminal Law Amendment Act (XIV. of 1908) ss. 12, 14 (1)*]. The power of the Sessions Judge to grant bail under s. 498 of the Criminal Procedure Code is, in cases to which the provisions of Part I. of Act XIV. of 1908 have been applied by s. 2 thereof, abrogated by s. 14 of that Act.—EMPEROR *v.* LALIT KUMAR CHATTERJEE, (1910) I. L. R., 37 Cal 439.

Bail-bond—

BAIL-BOND—*Bail-bond, Forfeiture of—Bond for appearance before the Sessions Court—Production of the accused before such Court but not before the District Magistrate—Sureties, Liability of—Bail-bond, Terms of—Criminal Procedure Code (Act V. of 1898), s. 514.*] A bail-bond providing only for the production of certain accused persons before the Sessions Court on a certain date is complied with by the appearance of the accused before such Court on such date, and the sureties are not bound to produce them subsequently before the District Magistrate. A bail-bond to produce the accused in the Sessions Court on every date fixed for the hearing of an appeal, or whenever required, is also complied with by the attendance of the accused during the hearing; and, though a requisition might be made by the Court of Session for their subsequent production in that Court, the sureties are not bound to produce them thereafter before the District Magistrate. A bail-bond should contain a clear proviso for the production of the accused before the Court or officer who is to take measures to secure their surrender and to re-commit them to jail in terms of the warrant, *General Rules and Circular Orders (Criminal) of the High Court, Chap. I. Rule 119*, referred to.—BEHARI LAL CHATTERJEE *v.* EMPEROR: RASH BEHARI SEN *v.* EMPEROR (1909), I. L. R., 36 Cal. 749.

Bench Magistrates—

BENCH MAGISTRATES—*Criminal Procedure Code, s. 16—Rules by Local Government.*] Rule 6 of the Rules framed by the Local Government under s. 16 of the Criminal Procedure Code for the guidance of Magistrates' Benches, directing that in a bench of two Magistrates, the decision of the chairman should prevail, is authorised by the Code and is consistent with it. The rule is quite within the powers conferred upon the Local Government by s. 6 cl. (*d*), of the Code, and is covered by the authority given by that clause.—KAILASH CHANDERA INDU *v.* KALI PROSONNO RAY, 10 C. W. N. 642; F. B.

Bengal Regulation—

1. BENGAL REGULATION—(*Act XI. of 1796*) *s 4*] provides that, after taking certain specified proceedings, the Magistrate is to order the attachment of any land or other real property, held by a person charged with a criminal offence who may evade the Magistrates' process by flight or concealment.—JUGGOMOHUN BUKSHEE *v.* ROY MOTHOORANATH CHOWDHURY 11 M. I. A. 223.

2. BENGAL REGULATION—An order of the High Court at Calcutta, under s. 26 cl. 2 of Bengal Regulation (V. of 1831), dismising a Moonsiff for corruption in the exercise of his function as Judge, is final, and there is

Bengal Regulation (*contd.*)—

no jurisdiction in the Judicial Committee to admit a special appeal therefrom.—IN THE MATTER OF SREE MOHUN GHUTTACK, 13 M. I. A. 343

Bigamy—

1. BIGAMY—*Criminal Procedure Code, s 198—Act No. XLV. of 1860 (Indian Penal Code), ss. 494 and 498—Jurisdiction—Complaint.*] The husband of a woman who had left him laid a complaint before a Magistrate alleging facts which seemed to constitute the offence provided for by s. 498 of the Indian Penal Code. In the course of the inquiry consequent upon this complaint, it appeared that an offence falling under s. 494 of the Code had been committed, and the Magistrate accordingly made an order of commitment under s. 494 of the Code. *Held* that such commitment was not illegal. It was not necessary that the complainant should specify precisely the section under which the person complained against should be charged and he had laid before the Magistrate matter which, if proved, would be sufficient to warrant a commitment under s. 494. *In the Matter of Ujjala Bewa*, 1 C. L. R., 523. appproved. —EMPEROR *v.* ALLI, I. L. R., 25 All, 209.

2. BIGAMY—*Native Christian having a Christian wife living—Effect of marrying a Hindu woman according to Hindu religion —Act XLV. of 1860 (the Indian Penal Code), s. 494.*] A Native Christian, who having a Christian wife living, marries a Hindu woman according to Hindu rites without renouncing his religion, is guilty of an offence under section 494, Indian Penal Code. *In re Millard* (I. L. R., 10 Mad. 218) followed in principle. *In re Ram Kumari* (I. L. R , 18 Cal. 264) followed in principle. *Proceedings dated 8th November 1866* (3 M. H. C. R., App., vii.) not followed. *Obiter.*—It will make no difference even if he had renounced the Christian religion before contracting the second marriage.—EMPEROR *v.* LAZAR, I. L. R., 30 Mad. 550.

3. BIGAMY—*Penal Code, ss. 494, 496—Fraudulently going through the form of marriage—Trial by Jury.*] *Held* that a case of bigamy is not contemplated by s. 496 of the Penal Code. The essence of an offence under s. 496 is that the marriage ceremony should be fraudulently gone through and that there should be no lawful marriage The parties to the marriage or at least one of them must have the knowledge that there is no marriage. Where it is not intended that there should be only a show of marriage for some ulterior and fraudulent purpose, the case comes under s. 494 and not under s. 496 of the Penal

Bigamy (*contd.*)—

Code In the present case, the trial being by Jury, the High Court refused to alter the charge from s 496-109 to s 494-109 of the Penal Code.—SHEIKH ALIMUDDIN *v.* EMPEROR, 10 C. W N 982.

4. BIGAMY—*Held* that a case of bigamy is not contemplated by s. 496 of the Penal Code. The essence of an offence under s. 496 is, that the marriage ceremony should be fraudulently gone through, and that there should be no lawful marriage. The parties to the marriage, or at least one of them, must have the knowledge that there is no marriage. Where it is not intended that there should be only a show of marriage for some ulterior and fraudulent purpose, the case comes under section 494, and not under s 496, of the Penal Code In the present case, the trial being by Jury, the High Court refuse to alter the charge from s. 496-109 to s. 494-109 of the Penal Code.—SHEIK ALIMUDDIN *v.* EMPEROR, 10 C. W N. 982.

Bombay Abkari Act (Bom. Act V. of 1878)—

BOMBAY ABKARI (ACT V. OF 1878)—*Bombay Act V. of 1878, ss 3 (10), 9, 43—Cocaine—Import by sea into the Bombay Harbour—"Import," meaning of—Sea Customs Act (VIII. of 1878), s. 19.*] S. 9 of the Bombay Abkari Act (Bombay Act V. of 1879) does not prohibit importing cocaine generally; it merely prohibits its importation unless duty has been paid. The intention and requirement of the section in the case of articles liable to duty under the tariff Act are that the duty shall be paid. That intention and requirement can only be contravened when reasonable opportunity to pay the duty has been afforded and has been evaded. The mere entry into the Bombay harbour of a ship conveying dutiable goods or merely tying it up against the dock wall is not importing goods in contravention of the obligation to pay duty. The term "import" as used in the Bombay Abkari Act, 1879, includes the conveying into any part of the Presidency of Bombay by sea.—EMPEROR *v.* DE SYLVA, I. L. R., 33 Bom. 380.

Bombay City Police Act (Bom. Act IV. of 1902)—

BOMBAY CITY POLICE ACT (BOM. ACT IV. OF 1902)—*Bom. Act IV. of 1902, ss. 12, 16, 18—Commissioner of Police—Orders issued by the Commissioner forbidding meetings by the members af the Police force to discuss matters concerned with the force —Orders relating to discipline and general government of the force—Construction of statutes.*] The Commissioner of Police in Bombay, under the powers vested in

Bombay City Police Act (Bom. Act IV. of 1902) (*contd.*)—

him by section 12 of the Bombay City Police Act (Bombay Act IV. of 1902), issued the following notification: "The Commissioner of Police under the provisions of s. 12 of Bombay Act IV. of 1902, hereby prohibits any member of the Police force from calling or attending a meeting to discuss any subject connected with the Police force, without his permission." This notification was read over to the members of the Police force at a muster parade at which the accused was present. Notwithstanding this, the accused attended a meeting of the members of the Police force convened to discuss subjects connected with the force. For this disobedience, the accused was proceeded against under s. 18 of the Bombay City Police Act (Bombay Act IV. of 1902). *Held*, that the Commissioner of Police was authorized to issue the notification under s. 12 of the Act, for the object of the notification was not to deprive the policemen of their private right but to regulate their conduct in their police capacity; that, therefore, the accused in disobeying the order had committed an offence punishable under s. 18 of the Act. The order which the Commissioner of Police is competent to issue under the head of discipline and general government, under s 12 of the Bombay City Police Act (Bom. Act IV. of 1902), must be one having reference to the conduct of the Police officers in their capacity as such officers. Over their conduct in other relations of life, his disciplinary power does not extend, so long as no element or question of their police duty enters into those relations. If it does enter, the controlling authority of the Commissioner comes into play and it becomes a matter of police discipline. The meaning of s 16 of the Act is that even when a Police officer is not actually at his post discharging the duty assigned to him, he is for the purposes of the Act to be regarded as being at that post, with all the rights and obligations of his office attaching to him. In construing an expression of doubtful import occurring in a Statute, the Court may well have regard to considerations outside the language of the Act.—EMPEROR *v.* ATMARAM, I. L. R., 31 Bom 480.

Bombay District Police Act—

BOMBAY DISTRICT POLICE ACT (BOM. ACT IV. OF 1890), S. 42—*District Magistrate—Order for prevention of disorder—Promulgation of the order—Presence of the Magistrate at the place when the order is promulgated*—Ultra vires *order.*] A District Magistrate issued a notification, under the provisions of s 42 of the Bombay District Police Act, 1890, prohibiting circulation of certain pictures throughout the whole District. The notification was promulgated in all the Taluka head-quarters. The Taluka head-quarters of the village, where the accused lived, was nearly twelve miles distant. At the time when he issued the notification, the District Magistrate was at a considerable distance from the village. The accused was convicted of having disobeyed the notification, in that he sold the prohibited pictures at his village. *Held*, reversing the conviction and sentence, that the notification in question could not be upheld under s. 42, because (1) it was not promulgated at the village where the accused lived: and (2) the District Magistrate was not present at or near the village at the time of the promulgation. *Per* CHANDAVARKAR, J.—The preliminary conditions essential under the provisions of s 42 of the District Police Act, for the exercise of the jurisdiction conferred by it, are these: (1) the jurisdiction is conferred on the Magistrate of the District or in his absence and subject to his own order the Magistrate of the First Class; (2) these must have jurisdiction in the town or village where the jurisdiction is intended to operate; (3) they must be present in such town or village or in the neghbourhood thereof at the time the jurisdiction under the section is set in motion.—EMPEROR *v.* DATTATRAYA LAXMAN, I. L. R., 36 Bom. 504.

Bombay Municipal Act—

1. BOMBAY MUNICIPAL ACT (ACT III. OF 1888), S. 39 — *Factory, establishment of—Permission of Municipal Commissioner.*] Where the accused obtained the permission of the Municipal Commissioner under s. 390 (1) of the City of Bombay Municipal Act, to establish a handloom factory worked by an oil engine but by means of this oil engine he also established a flour mill without any permission. *Held* that the accused was guilty of the technical offence under s. 390 of the Act becauee the flour factory was a separate factory inspite of the fact that it happened to be worked by the same power and he had no leave to establish the flour mill factory.—EMPEROR *v.* MULJI DAMODOR DASS, I L. R, 34 Bom. 344.

2. BOMBAY MUNICIPAL ACT (BOM. ACT III. OF 1888), S. 379, 379A—*Overcrowding of house—Notice to abate the nuisance—Service of notice—Owner—Rooms in a building let to different tenants—Overcrowding by tenants—Notice to the owner.*] The notice contemplated by s. 379A of the City of Bombay Municipal Act (Bom. Act III. of 1888) should be given to the owner of a building in cases where the owner has

Bombay Mnnicipal Act (*contd.*)—

let rooms in the building to separate tenants who cause overcrowding —MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v.* MATHURADAS I. L. R., 36 Bom. 81.

3. MUNICIPAL ACT, (BOM. ACT III. OF 1888), S. 377—*Municipal Commissioner—Neglected premises — Notice to remove nuisance — Magistrate's discretion.*] The accused was served with a notice of requisition under s. 377 of the City of Bombay Municipal Act , 1888, requiring him to remove filth, rubbish, heaps of *cutchera* and stable refuse from a large piece of vacant land belonging to him. He failed to comply with the requisition, and a prosecution was instituted against him. The Magistrate viewed the premises ; and having so viewed them, but without hearing any evidence, acquitted the accused, as the premises did not appear to him to be in a filthy condition :—*Held*, that the premises having appeared to the Commissioner in a filthy condition, the notice was validly issued under s. 377 of the City of Bombay Municipal Act, 1888 ; and that there having been a non-compliance with the notice, the offence was complete. *Held*, further, that the Magistrate was wrong in acquitting the accused on the sole ground that the premises did not appear to him to be in such a condition as to justify the issue of a notice under s. 377. S. 377 of the City of Bombay Municipal Act, 1888, enacts that the only condition precedent to the valid issue of a requisition is that it shall appear, not to the Magistrate, but to the Commissioner, that the premises are in the condition specified in the section.—EMPEROR *v.* RAJA BAHADUR SHIVLAL MOTILAL, I. L. R., 34 Bom. 346.

Bombay Prevention of Gambling Act (Bom. Act IV. of 1887)—

1. BOMBAY PREVENTION OF GAMBLING ACT (BOM. ACT IV. OF 1887)—*Bom. Act IV. of 1887, ss. 3, 4 (a)—Instrument of gaming—Single page of paper used for registering wagers.*] The expression "instruments of gaming" as defined in s. 3 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) includes a single page of paper used for registering wagers. —EMPEROR *v.* LAKHAMSI, I. L. R., 29 Bom. 264.

2. BOMBAY PRRVENTION OF GAMBLING ACT (BOM. ACT IV. OF 1887)—*Bom. Act IV. of 1887, ss. 304, and 12—Gambling in a machhwa—Public place—Bombay Harbour.*] The accused, fourteen in number, chartered a *machhwa* (boat). and, having got it anchored in the Bombay Harbour a mile away from the land, carried on gambling there. For this they were convicted of an

Bombay Prevention of Gambling Act (Bom. Act IV. of 1887) (*contd.*)—

offence under s. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1887) for gaming in a public place : *Held*, that the accused were not guilty of an offence under s. 12 of the Act, since they cannot be said to be gambling in a public place. *Per* BATTY, J.—The word "place" which is patient of many different meanings, must necessarily, in each instance in which it is used by the Legislature, be construed with reference to the intention to be inferred from the context Thus in s. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1887) or in s. 3 of 36 and 37 Vict., c. 38, in connection with such words as roads, streets and thoroughfares, it has a very different meaning from that which it bears in s. 4 of the Act, and from that given to it in connection with s. 3 of 16 and 17 Vict., c. 119, by judicial decisions. The mischief aimed at in s. 4 of the Act is a mischief clearly distinct from that aimed at in s. 12 of the Act. In the former the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection known as a place where gambling is to be carried on and making a livelihood by attracting people to a place which they would not otherwise frequent. In the latter, the offence is not that the individual members are making a profit at all but simply that they are carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed—if his inclinations lie that way—to join in or follow the bad example openly placed in his way. In the one case comparative privacy for profit, in the other the bad public example and accessibility to the public, would seem to constitute the gravamen of the offence. S. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1887) aims at gambling *in* a public place or thoroughfare, ordinarily with no intervening obstruction to the public view, where there is voluntary publicity.—EMPEROR *v* JUSUB ALLY, I. L. R., 29 Bom. 386.

Bombay Regulation (II. of 1827)—

BOMBAY REGULATION (II. OF 1827)—*Bom. Reg. II. of 1827, s 56—Pleader—Misbehaviour — Suspension of Sanad — High Court's disciplinary jurisdiction.*] Pleaders are a privileged class enrolled for the purpose of rendering assistance to the Courts in the administration of justice Their position, training and practice gives them influence with the public and it is directly contrary to their duty to use that influence for the purpose of bringing the administration of justice into contempt. A

Bombay Reguiation (II. of 1827) (*ctd.*)

pleader, who presides at a public meeting and therein procures the passing of a resolution contemptuously denouncing or protesting against the conduct of a High Court Judge in passing sentence at a trial at the Criminal Sessions, is guilty of misbehaviour (under s 56 of Regulation II. of 1827).—GOVERNMENT PLEADER *v.* JAGANNATH, I. L. R., 32 Bom. 252

Bombay Salt Act (Bom. Act II. of 1890)—

BOMBAY SALT ACT (BOM. ACT II. OF 1890) —*Salt.—Removal of Salt.—Intention—Knowledge—Ingredients of offence.*] To support a conviction under s. 47 (*a*) of the Bombay Salt Act (Bombay Act II. of 1890) it is not necessary to prove dishonest intention on the part of the accused; since the wording of the clause does not in express terms or by necessary implication make intention or knowledge an essential ingredient of the offence. What is prohibited by the Act is the removal of salt in contravention of any license or permit and that shows that such removal is prohibited in itself.—EMPEROR *v.* MAGANLAL, I. L. R., 28 Bom. 346.

Brahmo Samaj—

BRAHMO SAMAJ—*Marriage—Polygamy—Act III. of 1872, s. 19.*] A marriage performed in accordance with the rites of the Brahmo Samaj is invalidated by the fact that either of the parties thereto has a husband or wife by a previous marriage alive.—SONALUXMI *v.* VISHNUPRASAD, I. L. R., 28 Bom. 597.

Breach of the Peace—

1. BREACH OF THE PEACE—*Criminal Procedure Code (Act V. of 1898), ss. 145 526—Transfer of a case—Criminal case—Bias of Judge—Magistrate's powers under s. 145—Rights of the parties—Practice.*] The provisions of s. 526 of the Criminal Procedure Code (Act V. of 1898), do not give any power to direct the transfer of any proceedings initiated under s. 145 of the Code. Such proceedings do not constitute a "criminal case" within the meaning of s. 526 of the Code. A criminal case means a case arising out of, and dealing with, some crime already committed. It does not include proceedings taken for the prevention of crime. Under s. 145 of the Code a Magistrate is not at liberty to go into the merits of the claims of any of the parties to the dispute, to a *right* to possess the subject thereof. He can decide only the fact of possession at the date of the order requiring the parties to put in their statements. The parties cannot be called upon to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive, or at which he may have arrived, as to the respective titles of the parties.—*In re* PANDURANG GOVIND, I. L. R., 25 Bom. 179.

Breach of the Peace (*contd.*)—

2. BREACH OF THE PEACE—*Immoveable property, Dispute as to—Order of Magistrate, Contents of—Opportunity to produce evidence—Sessions Judge, Power of revision or reference—High Court, Powers of—Code of Criminal Procedure (Act V. of 1898), ss. 145 and 435—Charter Act (24 and 25 Vict.), c 104, s. 15.*] Proceedings under Chapter XII. of the Code of Criminal Procedure are not proceedings with regard to which a Sessions Judge has any power of revision or reference, nor has he the power to call for the records in such proceedings. The High Court only can interfere under the power of superintendence conferred upon it by the Charter Act. The order of a Magistrate instituting proceedings under s 145 of the Code of Criminal Procedure should set out the grounds on which he is satisfied that a dispute likely to cause a breach of the peace existed, and the parties to the proceedings should be given an opportunity of adducing their evidence.—JAGOMOHAN PAL *v.* RAM KUMAR GOPE, I. L. R., 28 Cal. 416.

3. BREACH OF THE PEACE—*Disobedience of order—Evidence—Penal Code (Act XLV. of 1860) s. 188—Criminal Procedure Code (Act V. of 1898), s. 144.*] To constitute an offence under s 188 of the Penal Code of disobedience to an order issued under s 144 of the Criminal Procedure Code, there must be *definite* evidence on the record to show that such disobedience is likely to lead to a breach of the peace. *Brojo Nath Ghose* v. *Empress*, 4 C. W. N. 226.—RAM GOPAL DAW *v.* EMPEROR, I. L. R., 32 Cal. 793.

4. BREACH OF THE PEACE—*Apprehended danger—Prohibitory order without express limitation of time—Legality of the order—Criminal Procedure Code (Act V. of 1898), ss. 144 cl. (5), 555, Sch. V. Form XXI.*] An order under s 144 of the Criminal Procedure Code is not bad because it does not state that its operation is confined to two months, or some shorter period, from the making thereof. Unless there is something in the order which shows that it was intended that it should remain in force for more than two months, it must be presumed that the order is to be limited to two months as required by clause (5) of the section. *Golam Mahamad* v. *Bhubhan Mohun Moitra* (2 C. W. N. 422

Breach of the Peace (*contd.*)—

Remjit Singh v. *Luchman Prosad* (7 C. W. N. 140) and *Bidhu Ranjan Masumdar* v. *Ramesh Chandra Rai* (11 C W. N. 223) discussed.—RAM NATH CHOWDHRY *v.* EMPEROR, I. L. R., 34 Cal. 897.

Building—

BUILDING—*"Re-erection"—Renewing or repairing a roof replaced on its former site—Reconstruction not exceeding one-half its cubical extent—"Building" whether a shed with posts and tin roof is a—Building-line of a road, encroachment on—Calcutta Municipal Act (Ben. III. of 1899), ss. 3 (3), (39) (a), 351, 449.*] The removal of an old roof of a shed consisting of posts and the replacing on the same site either of a new roof or the former one after repairs, without an alteration exceeding one half its cubical extent, is not a "re-erection" within s. 3 (39) (*a*) of the Calcutta Municipal Act. The offence of infringing on a building line within the meaning of s. 351 is, having regard to the definition in s. 3 (3), the erection or re-erection of the wall of a building within that line, and not the removal of an old roof and replacing it on the same site.—TRIPENDESWAR MITTER *v* CORPORATION OF CALCUTTA, I. L. R., 39 Cal. 84.

Bustee Land—

BUSTEE LAND—*Owner of bustee—Receiver—Liability of actual owner to carry out bustee improvements when his estate is under a Receiver appointed by the High Court—Calcutta Municipal Act (Ben. Act III. of 1899) s. 408.*] When a notice under s. 408 of the Calcutta Municipal Act has been served on the actual owner of an estate in the hands of a Receiver appointed by the High Court, he is liable under the section as such, and not the Receiver, to carry out the requisitions made therein It is incumbent on the owner in such a case to request the Receiver to comply with the notice, after taking the directions of the Court, and on the latter's failure to do so he should himself apply to the High Court making the Receiver a party. If the Court refuses the application, the owner would be enabled to satisfy the Magistrate that he had used all diligence to carry out the requisitions, and in the event of a conviction the penalty would be merely nominal. If the owner is helpless in the matter the General Committee may proceed under the section against the occupiers. *Parker* v. *Inge*, 17 Q. B. D. 584, referred to. A Receiver appointed by the High Court is not the "owner" of the premises he holds as such, nor is he an "agent or trustee" within the definition of the term in s. 3 (32) of the

Bustee Land (*contd*)—

Calcutta Municipal Act. *Fink* v. *Corporation of Calcutta*, I. L. R., 30 Cal. 721, followed.—CORPORATION OF CALCUTTA *v.* HAJI KASSIM ARIFF BHAM, (1911) I. L. R., 38 Cal. 714.

Bye-law—

BYE-LAW—*N.-W. P. and Oudh Municipalities Act (I. of 1900), ss 128 (c), 132—Municipal Board, Powers of—Bye-law held to be unreasonable and its enforcement refused.*] The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their Statutory powers by Municipal Boards in India. The Municipal Board of Naini Tal passed a bye-law under the powers conferred upon it by s. 128 (*c*) of Local Act (I. of 1900, to the following effect, namely:—"No coolie, whether bearing loads or not, no servant except in attendance with his master, and no prostitute shall use the Upper North Mall '(one of two parallel roads running along the north side of the Naini Tal lake)' at any time" *Held*, that, as regards the words "no servant, except in attendance on his master," this was under the circumstances an unreasonble bye-law; and the Court declined to give effect to it.—EMPEROR *v.* BAL KISHAN, I. L. R., 24 All. 439.

C.

Calcutta Municipai Act—

1. CALCUTTA MUNICIPAL ACT (BENG. III. OF 1899) *ss. 341 (1), 450 (3), 574 (c), 631—Notice to remove fixture—Disobedience of requisition—Application by General Committee to Magistrate for removal of fixture—Criminal prosecution for offence not instituted—Limitation of time for Criminal prosecution.*] Section 631 of the Calcutta Municipal Act applies only to a criminal prosecution instituted against a person under s. 574 (*c*) for non-compliance with a requisition under s. 341 (*1*) in the regular way, that is, on complaint as defined in s. 4 of the Criminal Procedure Code, and not to a proceeding taken under s. 450 (*3*) by the Magistrate on the application of the General Committee in respect of such non-compliance.—SARAT CHANDRA MUKERJEE *v.* THE CORPORATION OF CALCUTTA, I. L. R., 37 Cal 384

2. CALCUTTA MUNICIPAL ACT (BENGAL ACT III. OF 1899) *ss. 449 450, 452 and 579—Discretion of Magistrate—Fine and demolition—Limitation.*] The Municipal Magistrate should exercise the discretion vested in him under ss 449, 450 and 452 of the Calcutta Municipal Act (Bengal Act III. of 1899) with due regard to those rules which guide Courts of Equity in granting injunc-

Calcutta Municipal Act (*contd.*)—

tions, with this difference that he has also to consider whether or not a building ought to be demolished on the ground of its being a danger or obstruction to the public. The discretion is to be used after receiving evidence and hearing the defence, *Abdul Samad* v. *The Corporation of Calcutta*, I. L. R., 33 Cal. 287, referred to. The fact that in respect of the same deviation from the sanctioned plan of a building, the Corporation instituted two different proceedings at different times, one under s. 579, and another under s. 449, does not deprive the Magistrate of his discretion under s. 452 of the Act. The Calcutta Municipal Act does not prescribe any period of limitation for an action under s. 449 or s. 450, but the Court should, in directing a demolition, consider how far the delay in the institution of the proceedings would affect the action.—CHUNI LAL DUTT *v.* CORPORATION OF CALCUTTA, I. L. R., 34 Cal. 341.

Cantonments Act (XIII. of 1889)—

CANTONMENTS ACT (XIII. OF 1889)—*Act XIII. of 1889, s. 13—Supply—Intoxicating drug—Supply of liquor to a European soldier—Servant of a soldier buying liquor with soldier's money for soldier's use.*] The accused, a servant of a soldier, bought with his master's money liquor from a shop in obedience to his master's directions and gave it to him. On these facts, the Magistrate held that the act of the accused amounted to "supplying" liquor to a soldier within the meaning of the term as used in s. 13 of the Cantonments Act (XIII. of 1889), and convicted and sentenced him under the section: *Held*, reversing the conviction and sentence, that the term "supply" in s. 13 of the Cantonments Act (XIII. of 1889) must have a restricted meaning put upon it and it is inapplicable in the case of a servant giving his master liquor belonging to the master himself. Its context "barters or sells" indicates that it has the same idea underlying it in common with them. It also must relate to a transaction between two persons dealing at arm's length and therefore independent of each other.—EMPEROR *v.* PASCAL SHIMAU, I. L. R., 31 Bom. 523.

Cantonment Code—

1. CANTONMENT CODE—*Cantonment Code, s. 167 (j) Criminal Procedure Code, ss. 190, 191.*] Where a prosecution is started at the instance of a Cantonment Magistrate who also tries the case, he should, having regard to the provisions of ss. 190, 191 of the Criminal Procedure Code, inform the accused that he was entitled to have his case tried by another Court. His failure to do so would be an irregularity which

Cantonment Code (*contd.*)—

would vitiate the proceedings. The expression "articles of food which are of a perishable nature" is not intended to include such substance as brown sugar and hence any one selling it within the Cantonment, commits no offence.—MOHIB ALI *v.* KING-EMPEROR, 3 A. L. J. 694.

2. CANTONMENT CODE, 1899, RULES 94, 104—*Notice to repair bungalow—Revision.*] A notice under Rule 94 of the Cantonment Code can be issued only for such repairs as would be necessary for *public* safety. The safety of the tenant of a bungalow and its inmates is not *public* safety and does not justify the issue of a notice. Before trying an accused for not complying with a notice issued under Rule 94, the Magistrate should go into the question whether the notice was legal or not. Otherwise, if the notice is found to be illegal, the conviction would be set aside by the Chief Court on revision.—WAZIRULLAH *v.* CROWN, 1 P. R., 1906, Cr.; 48 P. L. R. 1906.

3. CANTONMENT CODE, 1899, *ss. 131, 283—Notice to pay rent.*] Where the accused rented a stall from the Cantonment authorities under s. 131 (i) of the Cantonment Code and was served with a notice demanding rent of the stall to be paid within 18 hours: *Held* that such notice was not a notice under the Code and failure to pay such stallage or rent was not a breach of any provision of the Code within the terms of s. 283.—KING-EMPEROR *v.* MAGHI RAM, 15 P. R. 1906, Cr.

Cattle Trespass—

1. CATTLE TRESPASS—*Cattle Trespass (Act I. of 1871), s 24—Rescue of cattle after seizure for trespassing on public property—Conviction—Omission to record finding as to whether locality was public property—Legalityof conviction.*] Certain persons had been fined for rescuing cattle after seizure under s. 24 of the Cattle Trespass Act, 1871. The judgment contained no finding to the effect that the land on which the cattle had been seized was public property in charge of the Public Works Department. *Held* that the conviction must be set aside, and the case remanded.—QUEEN-EMPRESS *v.* LAKSHMANNA, I. L. R., 24 Mad. 318.

2. CATTLE TRESPASS—*Cattle Trespass Act (I. of 1871), s. 22—Illegal seizure of cattle—Fine—Compensation*] A Magistrate is not competent under s. 22 of the Cattle Trespass Act to pass any sentence of fine; he can only award compensation for the illegal seizure of cattle.—BHAGIRATHI NAIK *v.* GANGADHAR MAHANTI, I. L. R., 27 Cal. 992.

Cattle Trespass (*contd.*)—

3. CATTLE TRESPASS—*Cattle Trespass Act* (*I. of 1871*), *ss. 20, 22—Criminal Procedure Code* (*Act V. of 1898*), *s. 4* (*o*)—*Appeal lies against order made under s. 22 of the Cattle Trespass Act.*] By s. 4 (o) of the Code of Criminal Procedure, the word 'offence' includes an act in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act; and a person against whom an order under s. 22 of the Cattle Trespass Act is made is a "person convicted on a trial" and is entitled to appeal under s. 407 of the Code of Criminal Procedure.—IN THE MATTER OF PONNUSAMI, I. L. R., 29 Mad. 517.

Causing Death by Rash or Negligent Act—

CAUSING DEATH BY RASH OR NEGLIGENT ACT—*Administering of a love-potion without knowledge of, or inquiry into, its actual contents—Penal Code* (*Act XLV. of 1860*), *s. 304A—Statement by accused, when the only evidence in the case, and relied on by the prosecution—Evidentiary value of such statement.*] If a person intentionally commits an offence, and consequences beyond his immediate purposes result, the result is not to be attributed to mere rashness: if knowledge cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate, but acts probably or possibly involving danger to others, which in themselves are not offences, may be offences within section 304A and kindred sections if done without due care to guard against dangerous consequences. *Reg.* v. *Nidamarti Nagabhushanam*, 7 Mad. H. C. 119. *Empress* v. *Ketabdi Mundul*, I. L. R. 4 Calc. 764, followed. Where the only evidence is a statement by the accused, and it is relied on by the prosecution as evidence thereof, it must be taken as a whole, and nothing can be read into it which is not contained therein.—PIKA BEWA *v.* EMPEROR, I. L. R. 39 Cal. 855.

Charge—

1. CHARGE—*Criminal Procedure Code* (*Act V. of 1898*), *s. 436—Fresh inquiry after improper discharge of accused persons—Jurisdiction of Sessions Judge after acquittal.*] Charges under ss. 304 and 147 of the Penal Code were brought by the police against certain accused in the Court of a Deputy Magistrate, who took all the evidence for the prosecution, but went on furlough without passing any order of committal or otherwise. His successor, considering the evidence insufficient to support the charges, altered them to charges under ss. 325 and 147 of the Penal Code, and, after hearing evidence for the defence, acquitted

Charge (*contd.*)—

the accused. The Sessions Judge, considering the alteration in the charges improper at such a stage, ordered a fresh inquiry into the offence. *Held* that the Sessions Judge had exercised a jurisdiction not conferred upon him by law, and that his order for a fresh inquiry must be set aside.—QUEEN-EMPRESS *v.* HANUMANTHA REDDI, I. L. R., 23 Mad. 225.

2. CHARGE—*Joinder of charges—Offences of same kind not within year—Failure of justice—Application of s. 537 of the Criminal Procedure Code—Power of Full Bench to send case back to referring Bench for final disposal—Rules of the High Court, Calcutta, Appellate Side, Ch. V., rule 5—Criminal Procedure Code* (*Act V. of 1898*), *ss 233, 234, 537.*] *Held* that s. 537 of the Criminal Procedure Code can be applied to any case in which the trial has been held on charges joined together contrary to s. 234 of that Code. *In the Matter of Luchminarain* (I. L. R., 14 Cal. 128), *Queen-Empress* v. *Chandi Singh* (I. L. R., 14 Cal. 395), and *Raj Chunder Mozumdar* v. *Gour Chunder Mozumdar* (I. L. R., 22 Cal. 176), overruled. *Held* further that the language of rule 5 of Ch. V. of the Rules of the High Court, Appellate Side, relating to references to the Full Bench in criminal matters, was sufficiently wide to enable the Full Bench to send the case back with the expression of their opinion upon the point of law raised to the Bench which referred it for final disposal.—IN THE MATTER OF ABDUR RAHMAN AND KERAMAT, I. L. R., 27 Cal. 839.

3. CHARGE—*Alteration of charge—Conviction of rioting with the common object of theft—Finding by Appellate Court of different common object—Legality of conviction on such finding—Penal Code* (*Act XLV. of 1860*), *ss. 147, 379—Criminal Procedure Code* (*Act V. of 1898*), *s. 423.*] The accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful assembly being the forcibly taking away of mangoes belonging to the complainant. On appeal the Sessions Judge not only found that the common object was not the taking of the mangoes, but that the dispute between the parties was as to certain land. He, however, dismissed the appeal, and confirmed the conviction. *Held* that, as the accused were convicted on a different finding of fact from that to which they were called upon to plead and to defend themselves at the trial, they were entitled to an acquittal.—RAHIMUDDI *v.* ASGAR ALI, I. L. R., 27 Cal. 990.

4. CHARGE—*Proceedings to be drawn up on day of committal—Charges of perjury and forgery—Specific statements as to such*

Charge (*contd.*)—

charges—Code of Criminal Procedure (Act V. of 1898) ss. 195, 477—Penal Code (Act XLV. of 1860), ss. 193, 466, 471.] If a Court of Session proceeds to take action under s 477 of the Code of Criminal Procedure, it must, in the first instance, frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge, the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose. *R* was examined as a witness by the Sessions Judge in a case On the 15th of February the Sessions Judge delivered judgment in that case, and on the same day purporting to act under s. 477 of the Code of Criminal Procedure, had *R* arrested and committed to jail on charges under ss. 193, 466, and 471 of the Penal Code. The 25th of February was fixed for commencing the preliminary inquiry. No proceeding was drawn up or charges framed on the 15th. On the 16th of February an order was recorded by the Sessions Judge as follows: "In the course of the Sessions trial decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered that *R* has committed offences under ss. 193, 466, and 471 of the Penal Code, and that it is my duty to hold an enquiry preliminary to committing him to the High Court to be tried for those offences. *R* was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding He will be produced before me, as directed in the warrant, on the 25th of February, when evidence will be taken." *Held* that the proceeding of the 10th of February contained no particulars of the statements made and acts done by *R* upon which perjury and forgery were charged against him, and was not in any sense a charge or order of commitment, and was not warranted by law.—RELLY *v.* KING-EMPEROR, I. L. R., 28 Cal. 434.

5. CHARGE—*Criminal Procedure Code (Act V. of 1898) ss. 195, 233 to 239—Joinder of offences and accused—Preliminary enquiry—Power of Sessions Court to try offenders separately where jointly committed for trial—Sanction to prosecute—Notice to accused—Necessity.*] The sections of the Code of Criminal Procedure which relate to joinder of charges (including section 239) refer to the trial of the accused. The ruling in *Subrahmania Ayyar* v. *Emperor*, (I. L. R., 25 Mad. 61), cannot be extended to a preliminary enquiry held by the Magistrate committing a case to a Sessions Court, so as to render the commitment itself illegal, because there was misjoinder of offences or of offenders. In such a case, the Sessions Judge, if he considers it necessary, can frame charges against and try the accused separately. There is no hard and fast rule that notice must be given in all cases to an accused person before sanction is accorded for his prosecution.—IN THE MATTER OF GOVINDU, I. L. R., 26 Mad. 592.

6. CHARGE—*Charge of Rioting—Conviction—Appeal — Acquittal — Convictions of house-trespass and hurt, legality of—Criminal Procedure Code, (Act V. of 1898), ss 232 and 423—Penal Code (Act XLV. of 1860), ss. 147, 323 and 448.*] The accused were convicted of rioting. That was the only charge before the Magistrate. On appeal the Sessions Judge acquitted them of rioting, but convicted them under ss 448 and 323 of the Penal Code of house-trespass and hurt. *Held*, that the convictions by the Sessions Judge should be set aside, that the offences were distinct and separate offences, which should have formed the subject of separate charges and that the accused had been prejudiced by the omission of those charges.—YAKUB ALI *v.* LETHU THAKUR, I. L. R., 30 Cal. 288.

7. CHARGE—*Misjoinder of Charges—Defective charge — Appeal—Trial by jury—Forgery—Using as genuine forged document—Cheating—Criminal Procedure Code (Act V. of 1898), s 423—Penal Code (Act XLV. of 1860), ss. 467 & 109, 468 & 109, 471, 417 & 511—Indian Registration Act (Act III. of 1877), s. 82.*] It was alleged by the prosecution that the accused had forged the registration endorsement and stamp on the back of a *kabala* by which he had sold certain lands to *D*, and that he had produced before a Sub-Registrar a forged mortgage-deed, whereby he purported to mortgage to D the identical lands sold under the *kabala*; it was also alleged that the accused had produced the said mortgage-deed, before the Secretary of a Loan Office, in order to induce that office to grant him a loan. The accused was tried in one trial on charge under ss. 467, 109, 468 & 109 of the Penal Code with regard to the alleged forgery of the *kabala*; under s. 82 of the Registration Act, and ss. 467 & 109, and s. 471 of the Penal Code with regard to the mortgage-deed, and also on charges under ss. 471, 417, & 511 of the Penal Code with reference to the attempt to cheat the Loan Office. The accused was convicted under s. 467, 109, 417, & 511 and s. 471 of the Penal Code:—*Held*, on appeal, (*i*). That as

Charge (*contd.*)—

the alleged forgery of the *kabala* and the presentation of the forged mortgage-deed to the Secretary of the Loan Office could not be said to be parts of the same transaction, there had been a misjoinder of charges; (*ii*) that the charge to the jury was defective, inasmuch as it did not show what the facts of the case were, what the evidence adduced was, or what was the case for the accused; (*iii*) that inasmuch as the evidence on the record showed that there was a case which ought to be investigated by a jury, the accused should be retried.—BIRENDRA LAL BHADURI *v.* EMPEROR, I. L. R., 30 Cal. 822.

8. CHARGE—*Charge—Addition to or alteration of—Indictment, subject-matter of—Cheating—"Property"—Money—Criminal Procedure Code (Act V. of 1898), ss 226, 227—Penal Code (Act XLV. of 1860) s. 420.*] The Sessions Court is not a Court of original jurisdiction, and though vested with large powers for amending and adding to charges, can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to matter not covered by the indictment. The accused was put upon his trial before the Sessions Court on charges under ss. 471 and $\frac{417}{511}$ of the Penal Code. Upon motion to the High Court it was held that a previous acquittal covered the charge under s 471, and that the accused could be tried only under s. $\frac{417}{511}$. When the case came to trial the Sessions Judge amended the charge to one under s. $\frac{420}{511}$:—*Held*, that the Judge had full power under the law to amend the charge, and that the High Court did not intend to fetter his discretion The word "property" in s. 420 of the Penal Code includes money.—BIRENDRA LAL BHADURI *v.* EMPEROR, I. L. R., 32 Cal. 22.

9. CHARGE, ABSENCE OF—*Penal Code, ss. 143, 379—Criminal Procedure Code, ss. 232, 244, 254—Offence triable as a warrant-case—Conviction of offence triable as a summons case—Legality of conviction—Material error.*] When a case is being tried as a warrant-case and a charge is drawn up of an offence which is triable as a warrant-case, and it is intended to proceed against the accused also for an offence which is triable only as a summons case that offence should form part of the charge. Where an accused person was summoned for offences under ss. 143 and 379 of the Penal Code and the trying Magistrate drew up a charge only for the offence under s. 379, but convicted the accused only for the offence under s. 143 of the Code. *Held* that the offence under s. 143 should have

Charge (*contd.*)—

formed part of the charge, and that the accused was misled in his defence by the absence of such a charge.—HOSSEIN SARDAR *v.* KALU SARDAR, I. L. R., 29 Cal. 481.

Charge to Jury.

1. CHARGE TO JURY—*Misdirection—Duty of Judge to explain law—Law explained in addresses by pleaders on both sides to Jury—Criminal Procedure Code (Act V. of 1898), ss. 297 and 298—Penal Code (Act XLV. of 1860), ss. 147, 149 323, 325, and 304.*] Where a Sessions Judge in charging a Jury under s. 297 of the Code of Criminal Procedure said: "The accused are charged with offences under ss 147, 323 with 149, 325 with 149, and 304 with 149. The law bearing on the case has been placed before you more than once in the addresses delivered by the learned pleaders on either side. I need not go into detail as to the law therefor." *Held*, that it was immaterial how much or how often the Jury may have been addressed by the pleaders on both sides upon the law The responsibility of laying down the law for the guidance of the Jury rested entirely with the Judge, and a verdict arrived at by the Jury in the absence of any such direction on the law by which they should be guided could not be accepted as a valid verdict in the case. *Held*, further, that although the common object of the unlawful assembly is stated in the charge, the Sessions Judge, ought, in commenting upon the provisions of s. 149 of the Penal Code, to draw the attention of the Jury expressly to the common object.—MENGAN DAS *v.* EMPEROR, I. L. R, 29 Cal. 379.

2 CHARGE TO JURY—*Misdirection—Duty of Judge—Evidence of approver—Corroboration—Re-trial—Criminal Procedure Code (Act V. of 1898), ss. 297, 298, and 337.*] A Sessions Judge in laying the evidence of an approver before the jury stated in his charge: 'If you think that the approver's story is worthy of credit in itself, you have to consider whether it has been corroborated on material points," and then, after describing what in his opinion were "the points of corroboration," told the jury that "the above are the points on which the evidence has been corroborated, and that corroboration is full and complete, if you believe it. You have to consider these points and decide, whether the approver has been corroborated in material points, and, if you find that to be so, then you have in his story sufficient evidence to connect all three accused with the crime. *Held*, that this was not a proper way to place the case before the jury. The Sessions Judge should have told the jury that, although the law permitted them to

Charge to Jury (*contd.*)—

convict on the uncorroborated evidence of an accomplice, it was not the practice of our Courts, which have consistently held that it was not safe or proper to convict on such evidence without some corroboration sufficient to connect each of the accused with the offence committed. With this caution the Sessions Judge should have laid before the jury evidence corroborating the statement of the accomplice. The nature of the corroborative evidence must be confirmatory of some of the leading circumstances of the story of the approver as against the particular prisoner Circumstances under which a new trial should or should not be ordered on account of a defective summing up with reference to the weight of evidence, pointed out. *Elahee Buksh* (5 W. R. Cr. 80), *Queen* v *Nawab Jan* (8 W. R. Cr. 19), *The Queen* v. *Kalla Chand Doss* (11 W R. Cr. 2) and *Palavasam* (Weir 535), referred to.—JAMIRUDDI MASAILI *v.* EMPEROR, I. L. R. 29 Cal 782.

3. CHARGE TO JURY—*Jury — Heads of charge—Contents of, and time of recording heads of charge — Misdirection of Jury—Omission to read whole of the depositions of witnesses—Omission to direct Jury to draw a "presumption" against the prosecution, when certain witnesses were not called—Direction in rioting cases—Oral proof of statements by witnesses to the police—Criminal Procedure Code (Act V. of 1898), ss. 162, 297 and 367—Circular Orders of the High Court, Chap. I, Order 59—Evidence Act (I. of 1872), s. 114, Ill. (g), and s. 157—Indian Penal Code (Act XLV. of 1860), ss. 141 and* $\frac{302}{149}$.] It is not necessary that the heads of charge to the Jury should be reduced to writing before delivery of the charge, but they ought to be written as soon as possible thereafter and when the facts are fresh in the Judge's mind. The heads of charge should represent with absolute accuracy the substance of the charge, and be such as to enable the High Court on appeal to see distinctly, whether the case was fairly and properly placed before the Jury. *Circular Orders of the High Court, Chap. I. Order 59*, referred to. It is not incumbent on the Judge to read the whole of the depositions of the witnesses to the Jury. It is enough that references have been made to them so as to sufficiently attract their attention to them. It is not necessary that the Judge should direct the Jury, in so many words, that the omission of the prosecution to call certain witnesses raised a "presumption" under the Evidence Act (I. of 1872), s 114, *Ill.* (*g*), that their evidence would be unfavourable to the Crown, if he has pointed out that the Jury might properly draw any

Charge to Jury (*contd.*)—

inference they pleased from such omission. Section 141 of the Penal Code is sufficiently explained to the Jury, if the Judge has told them that, if five persons go in a body with the common object of murdering a man, and if he is killed in the prosecution of the common object, then, no matter who struck the fatal blow, all are equally guilty of murder under ss $\frac{302}{114}$ of the Penal Code. Section 162 of the present Criminal Procedure Code prohibits the use of the record of the statement of a witness taken under section 161 as evidence, but does not override the general provisions of the Evidence Act as to proof of such statement by oral evidence, and such statement is admissible under s. 157 of the Act in corroboration of the evidence of the witness given at the trial. The proviso to section 162 of the present Code is confined to, and is for the benefit of, the accused. *Queen-Empress* v. *Bhairab Chunder Chuckerbutty*, 2 C. W. N. 702, distinguished. *Emperor* v. *Narayan Raghunath Patki*. I L. R., 32 Bom 111 *per* BRAMAN.J., dissented from. *Reg* v *Uttamchand Kopurchand*, 11 Bom. H. C. 120, and *Empress* v. *Kali Churn Chunari*, I. L. R, 8 Cal. 154, referred to.—FANINDRA NATH BANERJEE *v.* EMPEROR, I. L. R., 36 Cal. 281.

Charter Act—

CHARTER ACT—*Charter Act, s. 15, and Letters Patent, cls. 28, 29—Power of High Court to order stay of proceedings initiated under s. 476 of the Code of Criminal Procedure*.] The High Court has power, under s. 15 of the High Courts Act, and under clauses 28, 29 of the Letters Patent, to stay proceedings, when action, under s. 476 of the Code of Criminal Procedure, is taken by a Court subject to its powers of superintendence. Where a Court, in a Civil suit, finds a document to be a forgery and, while an appeal against its decision is pending, takes proceedings in the Criminal Courts under s. 476 of the Code of Criminal Procedure, the High Court will direct further proceedings in the Criminal Court to be stayed, if, on a consideration of the circumstances, it is satisfied that such proceedings are oppressive and will prevent the party from conducting his appeal. IN THE MATTER OF THE PETITION OF RAM PRASAD HAZRA, (B.L.R., F.B., 426), distinguished.—JOGIAH *v.* EMPEROR I. L. R., 31 Mad. 510.

Cheating—

1. CHEATING—*Concealment of Mortgage*.] The vendee-defendant in a suit for pre-emption compromised the suit, the plaintiff agreeing to pay a certain sum in cash, and to discharge certain incumbrances on the property in suit. It was subsequently dis-

Cheating (*contd.*)—

covered that the vendee had, after his purchase, but before suit, mortgaged the property which was the subject of the suit for pre-emption: *Held* that the vendee could not, on account merely of his omission to disclose the existence of this subsequent mortgage, be held guilty of the offence of cheating.—GENDAN LAL *v.* ABDUL AZIZ KHAN, I. L. R., 27 All. 302.

2. CHEATING — *Concealment by him to disclose incumbrances created by him subsequently to his purchase, Liability of Vendee of immoveable property for.*] The vendor of immoveable property cannot be convicted of cheating because he omits to mention that there is an incumbrance on the property, unless it is shown either that he was asked by the vendee whether the property was incumbered, and said it was not, or that he sold the property on the representation that it was unincumbered. *Horsfall* v. *Thomas* (31 L J., Ex., 322) referred to. —EMPEROR *v.* BISHAN DAS, I. L. R., 27 All. 561.

3. CHEATING—*Cheating by personation—Penal Code (Act XLV. of 1860), ss. 415, 419—Personation—Minors.*] On an application by the *kurta* of a joint Hindu family, in his representative character, to withdraw certain surplus sale-proceeds standing to their credit in the Treasury, the Collector directed him either to file a power of attorney or to cause all the other members to appear and admit his authority to sign on their behalf. They all appeared in person before the sheristadar, except two minors, who were personated by other persons, and signed receipts for the money and caused the personators to sign in the names of the minors. Thereupon the Collector, after inspecting the signatures issued a bill in their favour for the amount due, which they withdrew: *Held* that upon the facts the offence of cheating was not made out. *Reg.* v. *Longhurst* unreported. *In re Loothy Bewa*, 11 W. R Cr. 24 referred to.—BABURAM RAI *v.* EMPEROR, I. L. R., 32 Cal. 775.

4. CHEATING—*Penal Code (Act XLV. of 1860), ss. 415, 420—Deception—Dishonesty—"Wrongful loss"—"Wrongful gain."*] The accused by making a false representation that he was an employee of the Calcutta Municipal Corporation obtained Rupees ten as subscription from the Health Officer of that Corporation towards the funds of a charitable society. The money was duly made over by the accused to the charity, but he was subsequently charged with the offence of 'cheating' and was convicted under s. 420 of the Penal Code, and sentenced to rigorous imprisonment and fine: *Held* that the conviction and sentence should be set aside, there being no such deception in this case as to cause "wrongful loss" or "wrongful gain."—ASHUTOSH MALLICK *v.* EMPEROR, I. L. R., 33 Cal. 50.

5. CHEATING — *Evidence—Obtaining by false representation money as pretended security for appointment to office—Admissibility of proof of previous and subsequent similar but unconnected transactions as evidence of dishonest intention on the occasion in question—Part of a systematic series of similar fraudulent transactions—Evidence Act (I. of 1872), ss. 14, Expl. (1), Illus. (o); 15, Illus. (a)*] On a charge against the accused of cheating by falsely representing that he was the *dewan* of an estate and could procure for the complainant appointment to the vacant post of manager to the estate, and thereby obtaining a sum of money as a pretended security deposit, evidence of instances of similar but unconnected transactions with other persons, before and after the date of the offence charged, is admissible, under ss. 14 and 15 of the Evidence Act, not to establish the *factum* of the offence but to prove that the transaction in issue was one of a systematic series of frauds, and that the intention of the accused on the particular occasion in question was dishonest and fraudulent. Explanation (1) and Illus. (*o*) to s. 14 of the Evidence Act render facts showing the existence of a state of mind relevant only if they establish that such state of mind existed in reference to the particular matter in issue. S. 15 is an application of the general rule laid down in s. 14, and the words of the section as well as of Illus. (*a*) show that it is not necessary that all the acts should form parts of one transaction, but that they should be parts of a series of *similar* occurrences. *Reg.* v. *Holt*, Bell C. C. 280, discussed and distinguished. *Queen* v. *Francis*, L R. 2 C. C. R. 128, *Reg.* v. *Rhodes*, [1899] 1 Q. B. 77, *Reg.* v. *Ollis*, [1900] 2 Q. B. 758, *Rex* v. *Wyatt*, [1904] 1 K. B. 188, *Rex* v. *Bond*, [1906] 2 K. B. 389, *Makin* v *Att.-Gen. for New South Wales*, [1894] A. C. 57, and *Queen-Empress* v. *Vajiram*, I. L. R., 16 Bom. 414, followed. —EMPEROR *v.* DEBENDRA PROSAD, I. L. R., 36 Cal. 573.

6. CHEATING—The firm of P and K advanced money to *I* for the purpose of purchasing rice from outlying *hats*, whence it was to be shipped and delivered at the firm's place of business. The arrangement was that *I* would take the profit, but repay the amount advanced with interest and a commission of one anna per maund of rice sold. *I*, however, did not send any rice. From the evidence, it appeared that *I* made

Cheating (*contd.*)—

some attempts to purchase rice within the time within which he was to deliver the rice. *Held* that, under such circumstances, the mere fact, that he expended some money out of the amount advanced, was not sufficient in itself to prove that the intention of the accused, when he received the money from the complainants' firm, was dishonest, or that he obtained the money on fraudulent misrepresentation of facts. The case is one of breach of contract, and no charge under s. 420 of the Penal Code can be sustained. — DEPUTY LEGAL REMEMBRANCER *v.* IJJATULLA KAZI, 10 C. W. N. 1005.

Chittagong Hill Tracts—

CHITTAGONG HILL TRACTS—*Appeal from conviction of offences committed within—Jurisdiction of High Court to hear such appeal—Chittagong Act (XXII. of 1860), s. 1—Penal Code (Act XLV. of 1860), ss. 379, 457.*] There is no jurisdiction in the High Court to hear appeals in respect of sentences passed on conviction of offences committed within the districts known as the Chittagong Hill Tracts —QUEEN-EMPRESS *v.* SONAI MUGH, I. L. R., 27 Cal. 654.

City of Bombay Municipal Act (III. of 1888)—

CITY OF BOMBAY MUNICIPAL ACT (BOMBAY ACT III. OF 1888), S. 305—*Municipal Commissioner—Notice, disobedience of—Private streets—Levelling and draining of—Liability of owners of several premises—Owners of building sites—Buildings constructed by lessees on the sites—Premises, what are—Construction of statutes.*] The owner of a large plot of land sub-divided it into a number of building sites, which he arranged on either side of a private street which was projected to run through the plot. Those building sites were let to lessees (of whom the applicant was one) for a period of thirty years; at the end of the period the lessee was to remove the building put up by him unless the lessor purchased it. Under the terms of the lease the lessee was to contribute rateably to the expenses of making, repairing, etc., all ways, roads, etc. The applicant was one of those lessees. He built a house upon one of those sites, and let it to tenants from whom he received rent. The Municipal Commissioner of Bombay issued a notice to the applicant, under s. 305 of the City of Bombay Municipal Act (Bombay Act III. of 1888), calling upon him to level, metal, drain and light the public street in front of his building. The applicant failed to comply with the notice, for which he was prosecuted under s. 471 of the City of Bombay Municipal Act, 1888. He contended that he was not the owner of the premises within the meaning of s. 305 of the Act. The Magistrate overruled the contention and convicted him. *Held*, that the mere owner of the land who had let it out under a building scheme for building purposes was not the owner of the property, because the property contemplated by s. 305 necessarily embraced buildings, whether erected or to be erected; and the legislature regarded him as the owner of the premises who had the right to receive rent in respect of that property. The word "premises" occurring in s. 305 of the City of Bombay Municipal Act (Bombay Act III. of 1888) must be presumed to have been used by the legislature in its legal sense, as referring to the particular kind of property which forms the subject-matter of the group of immediately preceding sections of the Act. That group (ss. 302—307) has reference to streets made for the use of buildings or building sites. The dominant idea running through the ss. 302—304 is that of buildings either erected or projected. That is the kind of property dealt with in what has gone before s. 305; and therefore that is its "*præmissa*." It is a primary rule of interpretation that a word having a popular meaning ought to be construed in that sense. One exception to that rule is that, unless there is something to the contrary in the context, words of known legal import are to be considered as having been used in their technical sense, where the law has attached that sense to them.—EMPEROR *v.* RAMCHANDRA BHASKAR MANTRI, 34 Bom. 593.

City Municipal Act (Madras) III. of 1904—

CITY MUNICIPAL ACT (MADRAS), III. OF 1904, SS. 121, 125, 172 AND 177—*Right of appeal—Scope of section, assessment, finality of order of, when no objection made within 15 days.*] Petitioner's name appeared in the classification made under s. 121, Madras City Municipal Act of 1904, and he was served with a notice to pay profession tax under s. 125 of the Act. He did not pay the tax nor did he apply for revision within fifteen days of the notice:—*Held*, that under s. 177 the assessment was final and that no appeal lay. Profession tax is a matter within the scope of s. 172. The first clause of s. 172 of the Act of 1904 is wider than the corresponding clause of s. 190 of Act I. of 1884. S. 172 of the Act of 1904 must be construed to mean that all complaints against any tax or toll leviable under Part IV. and all applications for revision in respect of any such tax or toll are cognisable by the President and two Commissioners. It should not be read so as to limit the complaints and the applications for revision as to the question of classification. MUTHU-

City Mnnicipal Act (Madras) III. of 1904 (*contd.*)—

SAWMY AYYAR, J, *in Davies* v. *President of the Madras Municipal Commission.* [(1891) I. L. R., 14 Mad. 140 at 144], not followed. *Municipal Council of Cocanada* v *The Standard Life Assurance Company,* [(1901) I. L. R., 24 Mad. 205], distinguished.—VEERARAGHAVELU *v.* THE PRESIDENT OF THE CORPORATION OF MADRAS, 34 Mad. 130.

City Police Act (Madras) (III. of 1888)—

CITY POLICE ACT (MADRAS), (*III. of 1888*), *s. 75—Arrack shop is a place of "public resort" within section.*] The public have a right, under the terms of the license granted to arrack shopkeepers, to resort to such shops and such shops are places of public resort within the meaning of s. 75 of the Madras City Police Act III. of 1888.—THE CROWN PROSECUTOR *v* MOONOOSAMY, 33 Mad. 83.

Cognizance of Case—

COGNIZANCE OF CASE—*Criminal Procedure Code* (*Act V. of 1898*), *s. 190* (*1*) (*c*)—*Issue of warrant—Incompetency when Magistrate interested as Collector.*] The Deputy Commissioner of Palamow, as Collector representing the Court of Wards, was the proprietor of a certain share in a bazar which was leased to one C. On informations received, he ordered the issue of warrant against C and some others, charging them under ss. 465, 468 of the Penal Code and for abetment, for altering the lease. *Held* that the jurisdiction to arrest in cases in which a Magistrate acts on information, requires, for its foundation, knowledge of the fact of an offence having been committed, and the Magistrate is bound to disclose the information, private or otherwise on which he acts and issues warrant. S. 190, Criminal Procedure Code, does not relieve him from recording the information though it may not compel him to disclose the source of his information. *In the Matter of Surendra Nath Ray* (5 B. L R. 274) and, *In the Matter of Mohesh Chunder Banerji* (13 W. R. Cr. 1) referred to. *Held* also that in such a case as Collector, the Deputy Commissioner was directly interested in the matter, and it was not open to him as Magistrate to act on the information lodged to him as Collector, thereby making himself practically a Judge in his own case.—THAKUR PERSHAD SINGH *v.* THE EMPEROR, 10 C. W. N. 775.

Coin Offence—

1. COIN OFFENCE—*Counterfeiting Queen's Coin—Penal Code* (*Act XLV. of 1860*), *s. 232—Removing rings from coins used as ornaments and restoring the same to circulation.*] It is not an offence under s 232 of the Indian Penal Code to remove the ring from a coin which has been used to form part of a necklace or other ornament, and to work up the face of the coin where the ring has been, it not being shown that any material part of the coin has at any time been removed.—KING-EMPEROR *v.* MUHAMMAD HUSAIN, I. L. R., 23 All. 420.

2. COIN OFFENCE—*Murshidabad Rupees.*] Murshidabad rupees stand on tbe same footing as Farrukhabad rupees, and fall within *illustration* (*e*) to s. 230 of the Penal Code, these rupees having been stamped and issued by the authority of the Government of India, or at least of the Government of a Presidency, and issued as money under the authority of the Government of India, as were Farrukhabad rupees. They are therefore "Queen's coin" within the meaning of the section. It is the duty of every subordinate Court, where it finds a decision of the High Court to which it is subordinate applicable to a case before it, to follow such decision without question.—EMPEROR *v.* DENI, I L. R, 28 All. 62.

3. COIN OFFENCE—*Shahjahan's Coin.*] Where the offence charged consisted of selling or pawning, as genuine gold mohars of the reign of Shahjahan, silver rupees of that reign which had been gilt or in some way covered over with gold, it was *held* that the offence would be that of cheating, and not that of uttering false coin. A gold mohar of the reign of Shahjahan cannot be deemed to be "coin" within the meaning of s. 230 of the Indian Penal Code, as it is not used for the time being as money. *Regina* v. *Bapu Yadav* (11 Bom. H. C. Rep. 172) followed. *Queen* v. *Kunj Beharee* (5 N.-W. P. H. C. Rep. 187) distinguished.—EMPEROR *v.* KHUSHALI, I. L. R, 29 All. 141.

Commitment—

1. COMMITMENT—*Criminal Procedure Code s. 215.*] There is nothing to prevent a Sessions Court fron trying a person accused of an offence not triable exclusively by a Court of Session and duly committed to it for trial. When a commitment is duly made by a competent Magistrate, it can be set aside by the High Court only. The Sessions Judge has no power to set it aside, and direct the Magistrate to try the case himself.—BHEEMA, *In re*, 16 M. L. J 525.

2. COMMITMENT — *Criminal Procedure Code, ss. 215, 436, 489—Jurisdiction of Sessions Judge to order commitment—Revision by High Court.*] **S. 215** of the **Cri-**

Commftment (*contd.*)—

minal Procedure Code refers only to a commitment actually made. It is open to the High Court to consider whether the Sessions Judge has or has not excrcised a proper Judicial discretion under s. 436 of the Criminal Procedure Code, in setting aside a Magistrate's order of discharge and ordering commitment of the accused. For this purpose, the High Court may consider the facts as well as the questions of law involved. But the High Court will exercise this power only where it is manifest that the Sessions Judge's order was improper, as, for instance, where there was no evidence to prove the offence charged or where it is clear that the Court would not act on the evidence.—MUTHIAH PILLAI, *In re*, 16 M. L. J. 529.

3. COMMITMENT—*Summons case.*] A commitment under ss. 352, 447 of the Penal Code is illegal and should be quashed on the ground that it is a summons case, and there is no warrant for such commitment, and that the maximum punishment under each offence is one which the Magistrate can inflict.—KING-EMPEROR *v.* DHARAM SINGH, 3 A. L. J. 14.

4. COMMITMENT—*Criminal Procedure Code (Act V. of 1898), ss. 337, 339—Pardon—Withdrawal of pardon and commitment for trial—Procedure.*] R was charged with having committed the offence of dacoity with others. In consequence of a confessional statement made by R, pardon was tendered to him by the Stationary Sub-Magistrate under the Disirict Magistrate's order. R was subsequently examined as a witness for the prosecution at a preliminary enquiry into the dacoity held by the Magistrate under Chapter XVIII. of the Code of Criminal Procedure, but he retracted his former statement (which, he said, had been made in consequence of police torture), and asserted that he knew nothing about the dacoity. The dacoity case came on for trial in the Sessions Court, but R was not called as a witness, and, in the end, the persons charged were acquitted. Upon the subsequent application of the police, the District Magistrate withdrew the pardon which had been tendered to R, on the ground that the latter had withdrawn and contradicted his first statement. R was in due course charged before the same Sub-Magistrate with having been one of the dacoits, and was committed for trial. *Held*, that the commitment was legal. The words "in the case," which occur in s. 337 (*2*) of the Code of Criminal Procedure include a preliminary enquiry, and do not refer

Commitment (*contd.*)—

to the trial alone. If there is reason to believe that a person to whom pardon has been tendered will give false evidence, there is no duty on the prosecution to put him forward as a witness. Pardon conditionally granted may be at once withdrawn as soon as good faith has been broken, and good faith is broken if the witness does not disclose the truth to the Magistrate. The proper authority to withdraw a pardon is the authority which granted it. *Queen-Empress* v. *Manick Chandra Sarkar* (I. L. R., 24 Cal. 492) followed. *Semble*, that when pardon is revoked, no steps should be taken against the person who so forfeits it until after the trial of the other accused is over; and that his trial should then proceed *de novo*. *Queen-Empress* v. *Brij Narain Mon* (I. L. R., 20 All. 529) and *Queen Empress* v. *Bhau* (I. L. R., 23 Bom. 493), considered.—QUEEN-EMPRESS *v.* RAMASAMI, I. L. R., 24 Mad. 321.

5. COMMITMENT—*Accused person unable to understand proceedings in Court—Commitment of—Report by Magistrate of such proceedings to High Court—Power of High Court to pass final orders on such report—Discretion of High Court to order Sessions trial to be held—Criminal Procedure Code (Act V. of 1898), ss. 341, 471—Penal Code (Act XLV. of 1860), s. 302.*] An accused person, who had been for some time confined in a lunatic asylum, was tried and committed to the Sessions by a Deputy Magistrate on a charge of murder. The accused was deaf and dumb, and could not be made to understand the proceedings which had been taken. On the proceedings being forwarded to the High Court under s. 341 of the Criminal Procedure Code, it was held that the law does not contemplate that the Sessions trial should necessarily take place. That it is discretional with the High Court on a commitment made to order the Sessions trial to be held, and the High Court must consider whether any benefit would be likely to result, especially to the accused, by such trial. The High Court in this case, having come to the conclusion that no benefit would be likely to result to the accused by his being tried by the Court of Session, found that the accused was guilty of the alleged murder, but that he was, by reason of unsoundness of mind, not responsible for his action, and directed him to be kept in the District Jail to await the orders of Government.—QUEEN-EMPRESS *v.* SOMIR BOWRA, I. L. R., 27 Cal. 368.

6. COMMITMENT — *Accused — Improper discharge of—Power of Sessions Judge and District Magistrate to order commitment,*

Commitment (*contd.*)—

instead of directing fresh enquiry—Code of Criminal Procedure (Act V. of 1898), ss. 209, 307, 436, 437, 532.] Under s 436 of the Code of Criminal Procedure in cases exclusively triable by the Court of Session, the Sessions Judge and District Magistrate have co-ordinate powers to order a commitment upon the evidence already taken, instead of directing a fresh enquiry by the inferior Court, which has improperly discharged the accused. *Queen-Empress* v. *Krishna Bhat* (I. L. R., 10 Bom. 319) referred to.—QUEEN-EMPRESS *v.* SURENDRA NATH SARKAR, I. L. R., 28 Cal. 397.

7. COMMITMENT—*Right of the accused to cross-examine the prosecution witnesses, and to produce defence evidence before commitment—Power of Magistrate to commit at any stage of the case—Jurisdiction of the High Court, as a Court of Revision, to quash a commitment made to it in its Original Criminal Jurisdiction—Ciminal Procedure Code (Act V. of 1898), ss. 208, 215 and 347.*] S. 347 of the Criminal Procedure Code cannot be read as subject to s. 208, so as to render it imperative on a Magistrate, after he has decided to commit the case to the Sessions, to allow the accused to cross-examine the prosecution witnesses and to call witnesses in his defence. Where, therefore, the accused did not cross-examine the prosecution witnesses immediately after their examination-in-chief, but applied to the Magistrate, after the close of the prosecution, to cross-examine them and to examine defence witnesses: *Held*, that the Magistrate was justified under s. 347 in committing the case without the cross-examination of the prosecution witnesses and the examination of the witnesses for the defence. *In re Clive Durant*, Ratanlal's unreported Cr. Ca p. 975. followed. *Queen-Empress* v. *Ahmad*, I. L. R., 20 All. 264, *Emperor* v. *Muhammad Hadi*, I. L. R., 26 All. 177, dissented from. *Queen-Empress* v. *Sagal Samba Sajao*, I L. R., 21 Cal. 642, distinguished. *Quœre* :—Whether the High Court, in its Appellate and Revisional Jurisdiction, has power to quash a commitment made to the Court in its Original Criminal Jurisdiction.—PHANINDRA NATH MITRA *v.* EMPEROR, I. L. R., 36 Cal. 48.

Common Gaming House—

COMMON GAMING HOUSE — *Gambling Act (Bombay Act IV. of 1887), sections 4, 5, 7—Jamatkhana of the Borah community.*] *Held*, that in order to constitute an offence under s. 4 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887), of keeping a common gaming house, it is necessary to show, in the first place, that the person charged with that offence is the owner, or occupier, or a person "having the use" of the place alleged to be kept as a common gaming house. It is not sufficient to show that the accused used the place in question for the purpose of gaming there.—EMPEROR *v* WALIA MUSAJI, I. L. R., 29 Bom. 226.

Common Gaming House (*contd*)

Compensation—

1. COMPENSATION — *Criminal Procedure Code, s. 250—Vexatious complaint.*] In a case, the Magistrate ordered for the payment of compensation to the accused stating that the prosecution evidence was highly unsatisfactory and that upon the written statement and documents, he had no hesitation in saying that the case was vexatious. There was no criticism of the incidents involved in it nor any reason why he thought the case to be vexatious. *Held* that the order was bad.—AMJAD ALI *v.* ASHRAF ALI, 10 C. W. N. 544.

2. COMPENSATION TO ACCUSED—*Order of compensation made in a separate proceeding after and not in the order of discharge—Legality of the proceeding—Criminal Procedure Code (Act V. of 1898), s. 250 prov. (b).*] S. 250 of the Criminal Procedure Code requires that before a Magistrate makes it a ground for discharging an accused that the complaint was frivolous and vexatious he shall hear the complainant on that aspect of the case, and unless he does so the order of compensation is without jurisdiction and that, order awarding compensation must be contained in the order of discharge or acquittal and not passed in a separate proceeding after the accused has been discharged or acquitted. *In the Matter of the complaint of Safdar Hussain*, I. L. R., 25 All. 315 followed.—HARU TANTI. *v.* SATISH ROY, I. L. R., 38 Cal. 302.

3. COMPENSATION — *Ciminal Procedure Code, ss. 203, 250—Dismissal of complaint.*] Compensation under s. 250 of the Criminal Procedure Code can be awarded only when the accused is discharged or acquitted after trial. The dismissal of a complaint under s. 203 would not justify the award of compensation. Even if the accused is present at an enquiry under s. 202 and the complaint is dismissed under s. 203 as false, no compensation should be awarded.—HURPAL *v* MANKU, 3 P. R. 1906 Cr.; 85 P. L. R., 1906.

4. COMPENSATION — *Appellate Court, power of—Criminal Procedure Code (Act V. of 1898), s. 250—Consequential on incidental order.*] An Appellate Court has no power to order compensation under s. 250 of the Crimnal Procedure Code.—MEHI SINGH *v.* MANGAL KHANDU, I. L. R., 39 Cal. 157.

5. COMPENSATION — *Criminal Procedure Code (Act V. of 1898), s. 250—Application*

Compensation (*contd.*)—

for an order that a person should give security to keep the peace—Refusal of application—Compensation under s 250 of Criminal Procedure Code (Act V. of 1898).] To justify the application of s. 250, a person must be accused before a Magistrate of an offence triable by a Magistrate. A applied to a Magistrate of the First Class to order B to give security to keep the peace (s. 107, Criminal Procedure Code, 1898) The Magistrate after inquiring into the matter discharged B under s. 119 of the Criminal Procedure Code, and directed A to pay B Rs. 50 as compensation under s. 250 of the Code. *Held* that the award of compensation was illegal. The institution of proceedings under s. 107 of the Criminal Procedure Code was not an accusation of an offence triable by a Magistrate within the meaning of s. 250 of the Code. *Queen-Empress* v. *Lakhpat* (I. L. R, 15 All. 365) followed.—*In re* GOVIND HANMANT, I. L. R., 25 Bom. 48.

6. COMPENSATION — *Criminal Procedure Code (Act V. of 1898), s. 250—Frivolous or vexatious accusations—Case instituted on "information given to a Magistrate"—Information to a Village Magistrate—Discharge of accused—Order awarding compensation—Validity.*] A Village Magistrate is not a Magistrate within the meaning of s. 250 of the Code of Criminal Procedure ; and where a case has been instituted in consequence of a complaint made to a Village Magistrate, who sent a report to the police, who submitted a charge-sheet, the person who complained to the Village Magistrate cannot be ordered, under s. 250, to pay compensation to the accused if the latter are discharged.—KING-EMPEROR *v.* THAMMANA REDDI, I. L. R., 25 Mad. 667.

7. COMPENSATION — *Criminal Procedure Code (Act V. of 1898), ss. 4 (h) 250—Complaint—Report of Police-officer—Complaint by a Police officer in a non-cognisable case—False complaint.*] There is no section in the Criminal Procedure Code which empowers a Police-officer to make, of his own motion, any report to a Magistrate in a non-cognizable case ; hence, where he files a formal complaint in such a case, he cannot be said to 'make a report' and his complaint falls within the definition of 'complaint' in s. 4 (*h*) of the Criminal Procedure Code, 1898. Where a Police-officer appears before a Magistrate and makes a formal complaint of a non-cognizable offence, which is found to be false, the Magistrate can order him, under s. 250 of the Criminal Procedure Code, to pay compensation to the accused.—KING EMPEROR *v.* SADA, I. L. R., 26 Bom. 150.

Compensation (*contd.*)—

8. COMPENSATION — *Criminal Procedure Code, s 250—Frivolous accusation—Award of compensation to accused—Such award to be made by the order of discharge or acquittal and not by a separate order.*] When a Magistrate, on finding a complaint to be frivolous or vexatious, thinks it right to award compensation to the complainant, he must do so by his order of discharge or acquittal. Where a Magistrate made such an order in a separate proceeding after the accused had been discharged, it was *held* that his order was not merely irregular but without jurisdiction.—SAFDAR HUSAIN—IN THE MATTER OF THE COMPLAINT OF, I. L. R., 25 All. 315.

9. COMPENSATION—*Order of payment of compensation and imprisonment in default of such payments—Legality of such order—Compensation recoverable as fine—Code of Criminal Procedure (Act V. of 1898), ss. 250, 386, 387, 388, 389.*] A Magistrate passed an order under s. 250 of the Code of Criminal Procedure directing the complainant to pay compensation in a certain sum, and he further directed that "if the compensation is not realized within eight days, the complainant shall undergo 30 days' simple imprisonment." *Held* that the order was contrary to s. 250 of the Code of Criminal Procedure. That section directs "compensation shall be recoverable as if it were a fine," and s. 386 and the following sections of the Code direct by what means a fine shall be recovered. These sections would, therefore, be applicable for realization of the money ordered to be paid as compensation. But in regard to an order of imprisonment in such a case, s. 250, proviso (2), declares that "if the compensation cannot be recovered, simple imprisonment may be awarded for such term not exceeding 30 days." The alternative (imprisonment. therefore can only be awarded if compensation cannot be recovered.—LAL MAHMUD SHAIK *v.* SATCOWRI BISWAS, I. L. R., 28 Cal. 164

10. COMPENSATION—*Criminal Procedure Code (Act V. of 1898), s. 250—False case—Imprisonment in default of payment of compensation—Summary proceeding — Conviction of offence under Penal Code (Act XLV. of 1860), s. 211.*] It is only if the compensation ordered to be paid under s. 250 proviso (2) of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded ; therefore an order of imprisonment passed before any attempt is made towards recovery of the sum ordered to be paid as compensation is bad. S. 250 of that Code does not comtemplate that compensation shall be awarded because a case is found to be false, but where the Magistrate

Compensation (*contd.*)—

is satisfied that the accusation is frivolous and vexatious. The words "frivolous and vexatious" in that section indicate an accusation merely for the purpose of annoyance, not an accusation of an offence which is absolutely false. The conviction by a Magistrate of a person of an offence under s. 211 of the Penal Code in a summary proceeding is improper — PARSI HAJRA *v.* BANDHI DHANUK, I. L. R., 28 Cal. 251.

11. COMPENSATION—*Complaint—Dismissal of complaint as false, vexatious and malicious—False charge with intent to injure—Prosecution — Criminal Procedure Code (Act V. of 1898), s 250—Penal Code (Act XLV. of 1860), s. 211.*] Where in a criminal trial it is found by the Magistrate that, owing to the previous relations between the principals of the complainant and the accused, the complaint made was both false and malicious and made with some deliberation, and that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proeeedings. *Held*, that it was a case in which proceedings under s. 211 of the Penal Code should have been instituted against the complainant, and that the Magistrate in passing an order under s. 250 of the Criminal Procedure Code directing the complainant to pay compensation to the accused, did not exercise a proper discretion.—KINA KARMAKAR *v.* PREO NATH DUTT, I. L. R., 29 Cal. 479.

12. COMPENSATION—*Criminal Pcocedure Code, ss. 250, 423(1) (d)—Frivolous complaint—Compensation—Appeal — Powers of appellate Court.*] *Held* that an appellate Court is not empowered to grant compensation under s. 250 of the Code of Criminal Procedure, in view of the express terms of s. 250 "Magistrate by whom the case is heard." S. 423(1) (*d*) cannot be taken to confer such power.—BALLI PANDEY *v.* CHITTAN, I. L. R., 28 All. 625; A. L. J. 382.

13. COMPENSATION — *Notice to accused person necessary before order in his favour can be set aside.*] An order by a Magistrate directing payment of compensation to the accused ought not to be set aside on appeal without notice to the accused. It will also be safer to give notice to the officer appointed by the Local Government referred to in s. 422 of the Code of Criminal Procedure.—EMPEROR *v.* PALANIAPPAVELAN, I. L. R., 29 Mad. 187.

14. COMPENSATION—*Demolition—Epidemic Diseases Act (III. of 1897) s. 4, words "done or intended to be done" meaning of—Plague Regulation A, cl. 2, 4.*] The words "done or intended to be done" in Epidemic

Compensation (*contd.*)—

Diseases Act, 1897, s. 4, do not include omissions. *Folliffe* v. *Wallasey Local Board*, 9 C. P. 162, explained and distinguished. A Magistrate who omits to pay adequate compensation in respect of property demolished under the Act is personally liable and an action will lie against him in respect thereof even though he may have acted in his administrative capacity as Chairman of the Calcutta Corporation under clause 2 of Plague Regulation A (2) *Calcutta Gazette*, 1900, part I, page 1144. The Magistrate's decision as to the amount of compensation to be accorded is not final and can be reviewed by the Courts.—RAM LALL MISTRY *v.* R. T. GREER, I. L. R., 31 Cal 829.

Complaint—

1. COMPLAINT—*Criminal Procedure Code (Act V. of 1898), s. 203—Procedure—Dismissal of complaint—Subsequent complaint arising out of the same matter.*] When a competent tribunal has dismissed a complaint, another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it. *Nilratan Sen* v. *Jogesh Chundra Bhuttacharjee* (I. L. R., 23 Cal. 983) and *Komal Chandra Pal* v. *Gourchand Audhikari* (I. L. R., 24 Cal 286) followed. *Queen-Empress* v. *Puran* (I. L. R., 9 All. 85) and *Queen-Empress* v. *Umedan* (Weekly Notes, 1895, p. 86) referred to.—QUEEN-EMPRESS *v.* ADAM Khan, I. L. R., 22 All. 106.

2. COMPLAINT—*Withdrawal of—Criminal Procedure Code (Act V. of 1898), s. 248—Withdrawal of complaint—"Complainant."*] A complaint having been made to the police, the latter caused charges to be preferred under ss. 143 and 504 of the Penal Code against certain accused. The person who had complained to the police subsequently filed a petition praying the Second-class Magistrate to withdraw the charges under s. 248 of the Criminal Procedure Code. The Magistrate permitted the withdrawal, and directed the accused to be set at liberty. *Held* that the order was bad, there being no "complainant" in the case and that consequently the Magistrate, in purporting to act under. 248, had exceeded his powers. — QUEEN-EMPRESS *v.* CHENCHAYYA, I. L. R., 23 Mad. 626.

3. COMPLAINT—*Criminal Procedure Code (Act V. of 1898), s 203—Dismissal of complaint—Refusal by Magistrate to take cognizance of case—Subsequent trial by him.*] A complaint was laid in the Court of a Town Magistrate, charging certain persons with having committed offences under the Registration Act. The Town Magistrate dismissed the complaint on the ground that sanction, which he deemed to be necessary,

Complaint (*contd.*)—

had not been obtained. The complainant obtained sanction, and thereupon the Town Magistrate proceeded with the case and convicted the accused. On appeal, the Deputy Magistrate, while agreeing that the accused were guilty, reversed the conviction on the ground that inasmuch as the Town Magistrate had once thrown out the complaint under s. 203 of the Code of Criminal Procedure, he could not subsequently entertain it. On the case being referred to the High Court for orders: *Held*, that though in form, the Town Magistrate's order purported to dismiss the complaint under s. 203, in substance it refused to take cognizance of the offence on the ground that sanction was necessary and had not been obtained; and that the acquittal must be set aside.—QUEEN-EMPRESS *v.* KUNIYIL RARU, I. L. R., 24 Mad. 337.

4. COMPLAINT—*Dismissal of complaint by District Magistrate—Absence of complainant—Revival of, and further inquiry into, case by same Magistrate—Review—Code of Criminal Procedure (Act V. of 1898), ss. 259, 369, 437.*] Complainant filed a complaint under ss. 341, 323, 447, and 426 of the Penal Code The District Magistrate, after recording the statements of the complainant, ordered the issue of a summons to the accused returnable on the 19th April. On that day the complainant was absent when the case was called on. The District Magistrate dismissed the case under s. 259 of the Code of Criminal Procedure. Subsequently on the application of the complainant, the District Magistrate revived the case, and made it over to an Honorary Magistrate for trial. *Held* that the terms of s. 369 of the Code of Criminal Procedure must be read as controlled by s. 437 of that Code. S. 437 does not limit the power of a District Magistrate to make, or order a Subordinate Magistrate to make, further inquiry into a case in which an order of dismissal or discharge may have been passed by a Subordinate Magistrate. There is no bar to a District Magistrate making further inquiry into a case in which such order may have been passed by himself.—BIDHU CHANDALINI *v.* MATI SHEIKH MONDAL, I. L. R., 28 Cal. 102.

5. COMPLAINT—*Dismissal of complaint—Discharge of accused—Re-arrest of accused without previous order of discharge being set aside—Code of Criminal Procedure (Act V. of 1898), ss. 252, 253, 403, 436 and 437—Indian Post Office Act (VI. of 1898), s. 52.*] There is no express provision in the Code of Criminal Procedure to the effect that the dismissal of a complaint shall be a bar to a fresh complaint being entertained so long

Complaint (*contd.*)—

as the order of dismissal remains unreversed. An accused person was arrested on the charge of having stolen a registered letter from the Post Office, and was brought up before a Bench of Presidency Magistrates, charged with offences under s. 381 of the Penal Code and s. 52 of the Post Office Act, 1898 He was discharged on the same day, the Bench considering the evidence insufficient. Subsequently the accused was re-arrested on substantially the same charge, and was committed by the Chief Presidency Magistrate for trial upon further and fresh evidence. Upon an application by the accused to have the order of commitment discharged on the ground that the Chief Presidency Magistrate had no jurisdiction to make the commitment, as the previous order of discharge had not been set aside. *Held*, that the commitment was good. *Nilratan Sen* v *Jogesh Chundra Bhuttacharjee* (I. L. R., 23 Cal. 983) distinguished; *Grish Chunder Roy* v. *Dwarka Dass Agarwallah* (I. L. R., 24 Cal. 528) dissented from; *Opoorba Kumar Sett* v. *Probad Kumary Dassi* (1 C. W. N. 49) followed.—QUEEN-EMPRESS *v.* DOLEGOBIND DASS, I. L. R., 28 Cal. 211.

6. COMPLAINT — *Summary trial— Complaint disclosing facts constituting offence of a graver nature—Process, issue of—Trial for minor offences—Magistrates, Jurisdiction of—Illegality—Criminal Procedure Code (Act V. of 1898), s. 260.*] Where the complaint stated that the accused with a large number of other persons armed with swords and other deadly weapons came upon the complainant's land, threatened him, and, in spite of his remonstrances, cut his paddy, and the Magistrate in examining the complainant recorded merely the fact that the complainant stated that his paddy had been cut by the accused, and thereupon tried the accused summarily and convicted them under ss. 143 and 379 of the Penal Code. *Held*, that as the petition of complaint disclosed the commission of a much more serious offence than the offences for which the Magistrate had held a summary trial, and the examination of the complainant, which had not been properly recorded, did not show that such offence had not been committed, the Magistrate had acted without jurisdiction, and it was ordered that he should hold a regular trial.—BISHU SHAIK *v.* SABER MOLLAH, I. L. R., 29 Cal. 409.

7. COMPLAINT—*Complaint to Police—Report by police—Case ordered to be entered as true by Magistrate — Judicial enquiry—Right of complainant to be examined and to have his case tried — Criminal Procedure Code (Act V. of 1898), ss. 173, 200, and*

Complaint (*contd.*)—

202.] The complainant lodged information with the police charging certain persons with assault and with forcibly carrying off grain. The complaint was investigated and a report made to the Sub-Divisional Officer, who ordered the case to be entered as true, recording the offence under s. 147 of the Penal Code. He, however, declined to order a judicial inquiry because, in his opinion, there was no chance of a conviction. The District Magistrate subsequently on an application by the complainant ordered a judicial inquiry by a Subordinate Magistrate, but on receipt of his report he declined to interfere in the matter: *Held*, that the complainant was entitled to be examined under s. 200 of the Criminal Procedure Code, and as his complaint had already been recorded as true, he was entitled to a process against the accused and for the attendance of his witnesses. — KULDIP SAHAI *v.* BUDHAN MAHTON, I. L. R., 29 Cal. 410.

8. COMPLAINT — *Rape —Adultery —Committal of accused on charge of rape —Addition by Sessions Judge of charge of adultery —Criminal Procedure Code (Act V. of 1898), ss 199, 227, and 238—Penal Code (Act XLV. of 1860), ss. 376 and 497.*] Before a criminal charge of adultery can be preferred, a formal complaint of that offence must be instituted in the manner provided by s. 199 of the Criminal Procedure Code. Therefore, where an accused person was committed to the Sessions to stand his trial on a charge preferred by a husband of rape under s. 376 of the Penal Code and the Sessions Judge at the trial added a charge of adultery under s. 497, and acquitted the accused under s. 376, but convicted him of adultery under s. 497: *Held*, that the Sessions Judge had acted without jurisdiction. The fact that the husband appeared as a witness in the prosecution of the offence of rape cannot be regarded as amounting to the institution of a complaint for adultery. *Empress* v. *Kallu* (I. L. R., 5 All. 233) followed.—CHEMON GARO *v.* EMPEROR, I. L R., 29 Cal. 415.

9. COMPLAINT—*Complaint accusing several persons—Proceedings, institution of, against one—Conviction—Refusal by Magistrate to proceed against otner persons accused—Dismissal of complaint—Further enquiry—Notice—Criminal Procedure Code (Act V. of 1898), ss. 203 and 437.*] A complaint was made to a Magistrate charging several persons with the commission of an offence. The Magistrate instituted proceedings only against one of them, and after his conviction refused to issue processes against the others. On application by the complainant the Sessions Judge under s. 437 of the Criminal Procedure Code directed a further inquiry into the matter without notice to the other persons accused. *Held*, that the refusal by the Magistrate to issue processes was an order of dismissal of the complaint within the meaning of s. 203 of the Code in regard to which a further inquiry could be made. *Held*, further, that it is not necessary that notice should issue to a person accused of an offence before an order can be properly passed under s. 437 of the Criminal Procedure Code directing a further inquiry into a matter which has terminated in the summary dismissal of a complaint under s. 203 of the Code in the absence of any person excepting the complainant. *Hari Dass Sanyal* v. *Saritulla*, (I. L. R., 15 Cal. 608) discussed.—GIRISH CHUNDER GHOSE *v.* EMPEROR, I. L R., 29 Cal 457.

10. COMPLAINT—*"Complaint," meaning of—Prosecution for adultery or enticing away a married woman—Criminal Procedure Code (Act V. of 1898), ss. 4, cl. (h), 199*] The word "complaint," referred to in s. 199 of the Code of Criminal Procedure means a "complaint," as defined by s. 4, cl. (*h*) of that Code. *Jatra Shekh* v. *Reazat Shekh*, I. L. R., 20 Cal. 483, distinguished —TARA PROSAD LAHA *v.* EMPEROR, I. L. R., 30 Cal. 910.

11. COMPLAINT — *Criminal Procedure Code, s. 203—Dismissal of complaint under s. 203, no bar to Magistrate's rehearing complaint.*] On a reference by the Sessions Judge as to whether it was competent to a Magistrate, after dismissing a complaint under s. 203 of the Code of Criminal Procedure, to rehear the complaint, when such order of dismissal had not been set aside by a higher Court: *Held* (SUBRAHMANIA AYYAR and DAVIS, JJ., dissenting) that the dismissal of a complaint under s. 203 of the Criminal Procedure Code does not operate as a bar to the rehearing of the complaint by the same Magistrate, even when such order of dismissal has not been set aside by a competent authority. *Mahomed Abdul Mennan* v. *Panduranga* (I. L. R., 28 Mad. 256) dissented from: *Dwaraka Nath* v. *Beni Madhab* (I. L. R., 28 Cal. 652); *Mir Ahwad* v. *Mahomed Askari* (I. L. R., 29 Cal. 726) approved and followed. *Per* Sir ARNOLD WHITE, C.J.—The power to enquire into an offence must be held to exist in a Magistrate until something has occurred to divest the Magistrate of this jurisdiction. An order under s. 203 of the Code of Criminal Procedure is not a judgment to which the provisions of s. 369 will apply. The principle of *autrefois acquit* will not apply as there is no trial when the complaint is dismissed under s. 203 of the Code of Criminal Procedure. The provisions of ss. 147, 400, 215 and 210 of the

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Code of Criminal Procedure of 1872 compared with the corresponding ss. 203, 403, 253, 242 of the present Code. The alterations in the present Code in regard to the sections under consideration were merely drafting alterations and were not intended to effect and did not effect any alteration in the law as laid down by the old Code. *Per* BENSON, J.—The decisions in *Queen-Empress* v. *Adam Khan* (I. L. R., 22 All. 106); *Nilratan Sen* v. *Jogesh Chundra Bhuttacharjee*, (I. L. R., 23 Cal 983), and *Mahomed Abdul Mennan* v. *Panduranga Row* (I. L. R., 28 Mad. 255), do not apply, as in those cases it was not the *same* but a *different* Magistrate who proceeded to rehear the complaint. There is no bar under the Code to the complaint being reheard unless the proceedings have reached such a stage of finality that an acquittal or an order operating as such under the Code is recorded. *Per* MOORE, J.—The maxim *nemo bis vexari* has no application to an order under s. 203 of the Code of Criminal Procedure, though it may be a good argument, where an accused has been discharged under ss. 253, 259 of the Code. *Per* SUBRAHMANIA AYYAR, J.—Although the technical doctrine of *autrefois acquit* will apply only to acquittals, the principle underlying such doctrine, that a person should not, in respect of an offence, be in jeopardy of prosecution more than once, applies to cases where the prosecution failed to reach the stage of acquittal without any fault on the part of the accused, unless its application is precluded by the provisions of the Code. Acquittal in common law means an acquittal after verdict or sentence. The Legislature having by ss. 333, 494, 248 of the Code of Criminal Procedure given the term a wider significance, the explanation to s. 403 was intended to guard against the term being applied to cases where the plea of *autrefois acquit* was not technically applicable and not to bar the application of the aforesaid analogous principle where justice required it. There being thus no legal provision to the contrary, an order dismissing a complaint or discharging the accused, must, on the above principle, operate as a bar to further enquiry into the same matter as long as such order remains in force. Orders under ss. 203, 253, 259 of the Code of Criminal Procedure stand on the same footing as regards the application of this doctrine. There is no inherent power in a Magistrate to revise his own order of dismissal or discharge.—EMPEROR *v.* CHINNA KALIAPPA GOUNDEN, I. L. R., 29 Mad. 126; 15 M. L. J. 79; F. B.

12. COMPLAINT—*Magistrate—Complaint to Magistrate in charge of the sadar—Reference of complaint to another Magistrate for inquiry and report—Jurisdiction of latter to direct prosecution of the complainant before dismissal of the complaint—"Judicial proceedings"—Criminal Procedure Code (Act V. of 1898), ss. 4 (m) and s. 476.*] Where a complaint was lodged before the Senior Deputy Magistrate in charge of the *sadar*, who referred it to a Junior Deputy Magistrate "for inquiry and report," and the latter, after taking evidence, drew up a proceeding under s. 476 against the complainant, and submitted a report to the former Magistrate, upon which he dismissed the complaint the next day.—*Held*, that the proceeding before the Junior Deputy Magistrate was a "Judicial proceeding" within s. 4 (*m*), and that he had jurisdiction under s 476 of the Criminal Procedure Code to direct the prosecution of the complainant for an offence under s. 211 of the Penal Code committed before him.—KANCHAN GORHI *v.* RAM KISHUN MUNDUL, I. L. R., 36 Cal. 72.

13. COMPLAINT—*Dismissal of first complaint—Second complaint the same facts by different person.*] One M filed a complaint before the Magistrate for wrongfully taking away her daughter. This complaint was dismissed. The husband of the said girl next filed another complaint on the same facts but charging the accused of different offences. *Held* that the Magistrate was not competent to dismiss the second complaint on the ground of the dismissal of the first. He had jurisdiction and was bound to entertain the second complaint and deal it according to law.—KING-EMPEROR *v.* MEHERBAN HOSSEIN, 3 A. L. J. 562.

14 COMPLAINT—*Summons, Issue of—Complaint on information.*] Where a petition of complaint refers to facts obtained from information, the Court should, before issuing summons, satisfy itself upon proper materials that a case has been made out for issuing summons.—THAKUR PROSAD SINGH *v.* EMPEROR, 10 C. W. N 1090.

15. COMPLAINT — *Criminal Procedure Code, s 200.*] When a Deputy Magistrate authorized to receive petitions of complaints, received the petition and recorded the sworn statements of the petitioner as required by s 200 of the Criminal procedure Code but instead of himself passing an order either dismissing the complaint or issuing summonses on the accused, submitted the matter to the District Magistrate, it was *held* that he acted in contravention of the law. The order of the District Magistrate regarding a particular class of cases, directing the Deputy Ma-

Complaint (*contd.*)—

gistrate not to pass orders, but to submit them to him for orders is clearly illegal. It was improper for a Magistrate to pass an order dismissing a complaint, from his private room and without giving the complainant or his pleader an opportunity of being heard.—FANI BHUSHAN BANERJEE *v.* F. E. KEMP, 10 C. W. N. 1085.

16. COMPLAINT—*Dismissal of complaint by Subordinate Magistrate—Refusal by District Magistrate to order further inquiry—Revival of complaint after such refusal—Criminal Procedure Code (Act V. of 1898), ss. 203 and 437.*] A Subordinate Magistrate who has dismissed a complaint under s. 203 of the Code, is competent to revive it notwithstanding that the District Magistrate has refused to order a further inquiry in the matter on application made to him for that purpose.—JYOTINDRA NATH DAW *v.* HEM CHANDRA DAW, I. L. R., 36 Cal. 415.

Compoundable Offence—

1. COMPOUNDABLE OFFENCE—*Agreement to stifle a prosecution—Compounding a non-compoundable offence—Agreement as defence in a civil action—Suit for wrongful confinement—Contract Act (IX. of 1872), s 23.*] The plaintiff sued the defendant in damages for wrongful arrest and confinement. The defence pleaded an agreement whereby the parties had agreed to settle their differences in consideration of compounding some criminal charges, one of which was not by law compoundable and which were then pending between the parties in a Criminal Court. The Lower Appellate Court held that the plaintiff was prevented from bringing the action by reason of the agreement. On appeal—*held* that the object of the agreement being to satifle a prosecution was bad in law, and that the agreement, therefore, could not be set up as a defence in a Court of law.—DALSUKHRAM *v.* CHARLES DEBRETON, I. L. R., 28 Bom. 326.

2. COMPOUNDABLE OFFENCE—*Conviction set aside on appeal—Re-trial ordered—Compounding in re-trial.*] The conviction in a compoundable case was set aside on appeal and re-trial ordered. *Held* that there was nothing to prevent the parties from compounding the case after the order of re-trial and permission of the Court was not necessary for the same.—UMRAI *v.* MAKBULAN, 3 A. L. J. 523.

Confession—

1. CONFESSION—*Evidence Act (I. of 1872), s. 30—Confession by one of several persons jointly tried for the same offence—Plea of guilty by person so confessing—Criminal Procedure Code (Act V. of 1898), s. 271 — Discretion to continue trial after plea of guilty.*] The trial of an accused person does not necessarily end if he pleads guilty. Under s. 271 of the Criminal Procedure Code, where an accused pleads guilty, "the plea shall be recorded," and the accused "may be convicted" thereon; but evidence may be taken in sessions cases as if the plea had been one of "not guilty," and the case decided upon the whole of the evidence including the accused's plea. When such a procedure is adopted, the trial does not terminate with the plea of guilty, and therefore a confession by the person so pleading may be taken into consideration under s. 30 of the Evidence Act (I of 1872) as against any other person who is being jointly tried with him for the same offence. A trial does not strictly end until the accused has been either convicted or acquitted or discharged.—QUEEN-EMPRESS *v.* CHINNA PAVUCHI, I. L. R., 23 Mad. 151.

2. CONFESSION—*Accused — Signature — Thumb impression—General Clauses Act (X. of 1897) s. 3 cl. (52)—Criminal Procedure Code (Act V. of 1898) s. 164.*] A thumb-mark affixed to a confession by an accused able to write his name is not a "signature" within the meaning of s. 3 cl. (52) of the General Clauses Act or s. 164 of the Criminal Procedure Code.—SADANANDA PAL *v.* EMPEROR, I. L. R., 32 Cal. 550.

3. CONFESSION—*Joint trial — Plea of guilty by co-accused—Acceptances of plea by the Court and removal of co-accused from the dock—Trial of remaining prisoner alone—Admissibility of confession of co-accused against prisoner on trial—Evidence Act (I. of 1872) s. 30.*] Where a co-accused pleads guilty, and the Court has accepted the plea and directed his removal from dock, and the trial proceeds against the remaining prisoner alone, a confession by the former is not admisssible under s. 30 of the Indian Evidence Act, 1872, against the latter. *Queen-Empress* v. *Pahuji,* (I L R. 19 Bom. 195) approved.—EMPEROR *v.* KERAMAT SIRDAR, I. L. R., 38 Cal. 446.

4. CONFESSION—*Admissibility of statement alleging, whether truly or not, that it was not voluntary—Evidence Act (I. of 1872) s. 24.*] A statement in writing by the accused, which contains an allegation from which it is to be inferred that the statement of which it forms a part was not made voluntarily, is inadmissible.—EMPEROR *v.* TARANATH ROY CHOWDHRY, I. L. R., 37 Cal. 735.

Confinement in Stocks—

CONFINEMENT IN STOCKS—*Regulation XI. of 1816, s. 10—Confinement of Native Christian in stocks—Legality of order.*] By s. 10 of Regulation XI. of 1816, heads of villages are given summary powers of punishment in cases of a trivial nature, such as using abusive language, and if the offenders "shall be of any of the lower castes of the people on whom it may not be improper to inflict so degrading a punishment," they may be put in the stocks. A person who was a Mala, or Hindu pariah, by birth, and who had become a convert to Christianity, was convicted of having used abusive language and sentenced to two hours' confinement in the stocks under the said regulation. His profession was that of a weaver, but he, in fact, worked as a cooly. On the question of the legality of the sentence being referred to the High Court: *Held* that, to render a person liable to confinement in the stocks under the regulation, there must be a concurrence of two circumstances, *viz.*, (1) he must be a person belonging to one of the lower castes of the people, and (2) he must be a person on whom from his social standing or otherwise it may not be improper to inflict so degrading a punishment. That the test is not what is the offender's creed, but what is his caste. *Semble*, that a person who has changed his creed but continues to belong to his caste may be within the purview of the regulation if the caste is of the nature therein referred to, but if he abandons his caste he cannot longer be said to "belong to one of the lower castes of the people" and punishment by confinement in the stocks would no longer be legal. *The Queen* v. *Nabi* (I. L. R., 6 Mad. 247) discussed.—RATTIGADU *v.* KONDA REDDI, I. L. R., 24 Mad. 271.

Confiscation—

1. CONFISCATION — *Forfeiture—Sedition—Printing Press—Instrument used for the commission of offence—Disposal of Property—Criminal Procedure Code (Act V. of 1898), s. 517—Penal Code (Act XLV. of 1860), ss. 62, 124A.*] The first part of s. 517 of the Criminal Procedure Code refers to cases of offences relating to property or documents, *e.g.*, where the Court directs, as in cases of theft or criminal misappropriation or offences of a similar description, that the property stolen or misappropriated be restored to its owner. The words "which has been used for the commission of any offence" refer to cases of the same nature, *i.e.*, to instruments like guns or swords produced in Court. A printing press cannot be said to have been used for the commission of sedition, inasmuch as the offence consists in the publication, and not the printing, the press being only a remote instrument.—ABINASH CHANDRA BHATTACHARJEE *v.* EMPEROR, I. L. R., 34 Cal. 986.

Confiscation (*contd.*)—

2. CONFISCATION— A, the proprietor of large ancestral and other estates at Benares, died, leaving a widow and four sons. Shortly after A's death, three of the brothers became implicated in a rebellion against the State. The fourth brother, then a minor, was not concerned in the rebellion. At the suppression of the rebellion, Government issued proclamations for the parties severally to appear and answer the charges against them; but they absconded: the Government thereupon, acting under the provisions of Bengal Reg. XI. of 1796, confiscated the whole of their property, including the ancestral property, formerly held by A. *Held*, on appeal, that such confiscation was regular, and within the meaning of the Regulation, but that the act of Government, which divested the three sons of their right and interest in the estates, did not affect the rights of the fourth son, who was entitled to his share in all the ancestral estates of A, taken by the Government, under the forfeiture; and *Held* also, that the forfeiture did not affect the rights of A's widow, and that she was entitled to maintenance, out of the whole of the estate that was ancestral. — *Mussamat* GOLAB KOONWAR *v.* THE COLLECTOR OF BENARES, 4 M. I A. 246.

Conspiracy to wage war—

1. CONSPIRACY TO WAGE WAR. — *Penal Code (Act XLV. of 1860), s. 121A—Whether persons charged with one Conspiracy, can be found guilty of different Conspiracies—charge of Conspiracy—Acquittal, effect of—Whether person acquitted can be charged with same offence as part of a conspiracy—Discharge, effect of—Accomplice—Corroboration — Verification Proceedings, whether corroboration of accomplice or confession—Confession, relevancy of, against Co-accused—Evidence Act (I. of 1872) s. 30—Retracted Confession, unreliability of.*] Where the accused were charged with conspiracy with persons "known and unknown":—*Held*, that if the persons were "known," they should be named in the charge. Where a person has been tried for a specific offence and acquitted, and he is subsequently charged with conspiracy of which that offence is alleged to form a part:—*Held*, that an acquittal is conclusive; and it would be a very dangerous principle to regard a judgment of not guilty as not fully establishing the innocence of the person to whom it relates. *Rex* v. *Plummer*, [1902] 2 K. B.

Conspiracy to wage war (*contd.*)—

339, referred to. The course of not making completed offences the subject of a separate trial, but of throwing them into a case of conspiracy, though lawful, is not to be commended. Before the testimony of an accomplice can be acted on, it must be corroborated in material particulars. There must be corroboration not only as to the crime, but also as to the identity of each one of the accused. This is no technical rule, but one founded on long judicial experience. For a conspiracy to wage war, no act or illegal omission is necessary; the agreement of two or more will suffice. While admissions, which include confessions, are by s. 21 of the Evidence Act, 1872, declared *relevant* and may be proved as against the persons making them, all that s. 30 of the Evidence Act provides is that the Court *may* take them into consideration as against other persons. This distinction of language is significant, and shows that the Court can only treat a confession as lending assurance to other evidence against a co-accused, and a conviction on the confession of a co-accused alone would be bad in law. Moreover, under s. 30, that only can be taken into consideration which is a confession in the true sense of the term, so that to place any reliance on a retracted confession, against a co-accused would be most unsafe. *Yasin* v. *Emperor*, I. L. R, 28 Cal. 689, referred to. Verification proceedings do not add any value to an approver's evidence or to confessions, and cannot be regarded as corroboration. A discharge is not binding on the Court, for it is not equivalent to an acquittal. Still a discharge means that the Magistrate, after taking the evidence, found that there were not sufficient grounds for committing the accused for trial. A retracted confession cannot ordinarily take the place of legal proof. Where several persons are charged with the same conspiracy, it is a legal impossibility that some should be found guilty of one conspiracy and some of another, and any accused not shown to be a member of that conspiracy is entitled to demand an acquittal.—EMPEROR *v.* LALIT MOHAN CHUCKERBUTTY AND OTHERS, I. L. R., 38 Cal. 559.

2. CONSPIRACY TO WAGE WAR—*Confession of conspirator made to a Magistrate after arrest—Admissibility of the confession against a co-conspirator jointly tried with him—Evidentiary value of such confession—Evidence Act (I. of 1872) ss. 10, 30—Penal Code (Act XLV. of 1860) s. 121A.*] A confession by a conspirator made to a Magistrate after arrest disclosing the existence of a conspiracy, its objects and the names of its members, is

Conspiracy to wage war (*contd.*)—

not admissible, under s. 10 of the Evidence Act, against the co-conspirators jointly tried with him, but only under s. 30 of the Act. S. 10 is intended to make as evidence communications between different conspirators while the conspiracy is going on with reference to the carrying out of the conspiracy. The confession of a co-accused was not intended to be put on the same footing as a communication passing between conspirators or between conspirators and other persons with reference to the conspiracy. The evidentiary value of such a confession, under s. 30, is not higher than that of the statement of an accomplice, and it cannot be acted upon unless corroborated by independent testimony implicating the accused in the design with which they are charged.—EMPEROR *v.* ABANI BHUSHAN CHUCKERBUTTY, I. L. R., 38 Cal. 169.

Construction—

CONSTRUCTION—*The 21st Geo. III., c. 70, s. 24*] Protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their Judicial offices, does not confer unlimited protection, but places them on the same footing as those of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bona fide* in cases in which they have mistakenly acted without jurisdiction.—CALDER *v.* HALKET, 2 M. I. A. 293.

Construction of Statutes—

CONSTRUCTION OF STATUTES—*Bombay City Police Act (Bom. Act IV. of 1902), ss. 12, 16, 18.*] In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act.—EMPEROR *v.* ATMARAM, I. L. R., 31 Bom. 480.

Contempt of Court—

1. CONTEMPT OF COURT—*Penal Code (Act XLV. of 1860), s. 174—Non-attendance on service of summons—Appearance by mukhtar—Criminal Procedure Code (Act V. of 1898), s. 205.*] In a summons-case, on the day fixed for trial, an appearance was made on behalf of an accused person by his mukhtar, who asked the Magistrate under s. 205 of the Criminal Procedure Code (Act V. of 1898) to dispense with the personal attendance of the accused. The Magistrate, however, regarding the non-attendance of the accused as a contempt of Court, called upon him to show cause why he should not be prosecuted under s. 174 of the Penal Code for non-attendance on service of summons. *Held* that the accused did make an appearance, though

Contempt of Court (*contd.*)—

not a personal appearance, on service of summons; but that he did not personally attend should not under the circumstances have been regarded as an offence under s. 174 of the Penal Code.—DURGA DAS RAKHIT *v.* UMESH CHUNDRA SEN, I. L. R., 27 Cal. 985.

2. CONTEMPT OF COURT—*Criticism of Judge—Language used in criticism which strikes at the root of all respect for the Court.*] Any act done or writing published, calculated to bring a Court or a Judge of the Court into contempt or to lower his authority, or to obstruct or interfere with due course of justice or the lawful process of the Court is a contempt of Court. Judges and Court are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of Court. *Reg.* v. *Gray*, (2 Q. B. 36) followed.—*In re* NARASINHA CHINTAMAN KELKAR, I. L. R., 33 Bom 240.

Contradictory Statements—

CONTRADICTORY STATEMENTS—*Perjury—Power of the High Court to interfere in revisional jurisdiction—Criminal Procedure Code (Act V. of 1898), ss. 435, 439—Indian Penal Code (Act XLV. of 1860), s. 193.*] In the case of perjury arising out of contradictory statements the Court dealing with them should not convict unless fully satisfied that the statements are from every point of view irreconcilable, and if the contradiction consists in two statements opposed to each other as to matters of inference or opinion on which a man may take one view at one time and a contrary view at another, there can be no perjury, unless on oath he has stated *facts* on which his first statement was based and then denied those *facts* on oath on a subsequent occasion.—EMPEROR *v.* BANKATRAM LACHIRAM, I. L. R., 28 Bom. 533.

Conviction—

CONVICTION—*Conviction of an offence without specific charge—Misdirections to the jury.*] If the accused are charged with an offence under s. 304 or with one under s. 325, they may be convicted of an offence under s. 323 of the Penal Code, though no charge under that section has been drawn up against them. But when they are charged with those offences alleged to have been committed by another person in the course of a riot, *i.e.*, when they are charged under ss. 147 and 304 and 325 combined with s 149 of the Penal Code and the commission of the riot is disbelieved, they should not be convicted of the offence under s. 323 in respect of their individual

Conviction (*contd.*)—

acts with which they are not charged and which are not imputed to them in the Judge's charge to the Jury. The omission by the Judge in his charge to the Jury to mention the fact of the original witnesses named in the first information having been abandoned by the prosecution, of two of them having given evidence for the defence, and of the witnesses actually examined for the prosecution being entirely new witnesses, is a sufficient misdirection to justify the setting aside of the conviction.—DASARATH MANDAL *v.* EMPEROR, I. L. R., 34 Cal. 325.

Coroner—

CORONER—*Coroner, Inquisition by—Commitment—Presidency Magistrate, power of, to enquire into a case committed by Coroner—Discharge or acquittal by Presidency Magistrate, effect of—Bail—Coroners' Act (IV. of 1871) ss 24, 25, 26, 27, 29—Prisoner's Act (III. of 1900), s. 11—Criminal Procedure Code (Act V. of 1898) ss. 213, 214, 215, 477, 478, 498.*] An inquisition drawn up by the Coroner of Calcutta under the Coroners' Act against an accused person, although it may have the effect of a valid commitment upon which the High Court in the exercise of its Original Criminal Jurisdiction may act, has not that effect until it has been accepted by the High Court, and the Officers of the Crown have drawn up a charge in accordance with it. Such a commitment by the Coroner does not of itself oust the jurisdiction of a Presidency Magistrate to inquire into, commit or try the case; and until the High Court has accepted such commitment, any order of acquittal or discharge made by such Magistrate in the case will be operative subject to the discretion of the High Court whether it should take action upon the inquisition of the Coroner as an effective commitment. *Queen-Empress* v. *Mahomed Rajudin*, (I. L. R. 16 Bom. 159,) referred to. After a Coroner has drawn up an inquisition against a person and committed him to prison, the High Court alone is empowered to release such person on bail.—EMPEROR *v.* JOGESHWAR PASSI, I. L. R., 31 Cal. 1.

Cotton-Gambling—

COTTON-GAMBLING—*"Gambling" and Wagering," distinction between—Calcutta Police Act (Beng. IV. of 1866 as amended by Beng. Act III. of 1897), s. 44—Common gaming house—Instruments of gaming—Cotton-gambling not a game of contest.*] Betting must always be on an uncertain event, and betting in itself, apart from stakes being laid on a particular game or instrument of gaming in a public place, is not penal. Playing with cards, dice or

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money is penal if done in a public place. The offence as created by the Calcutta Police Act is a purely technical one, and nothing has ever been done on this side of India to include any form of betting or wagering without instruments in the offence, except in the single case of rain-gambling without a machine; and in order to include this, extraordinary legislation has had to be undertaken to make the books and registers in which rain gambling wagers are entered and all other documents containing evidence of such wagers instruments of gaming. Gaming is playing at any game, sport, pastime or exercise, lawful or unlawful, for money or any other valuable thing which is staked on the result of the game, *i e.*, which is to be lost or won according to the success or failure of the person who has staked. *Reg.* v. *Ashton* I. EL. & BL. 286, *Lockwood* v. *Cooper*, [1903] 2 K. B. 428, referred to Wagering which includes betting is making a contract on an unascertained event past or futnre (in which the parties have no pecuniary interest other than that created by the contract) by which the parties are to gain or lose according as the uncertainty is determined one way or the other. *Carlill* v. *The Carbolic Smoke Boll Co.*, [1892] 2 Q. B. 484, referred to. Cotton gambling is "betting" pure and simple. *Hari Singh* v. *Jadu Nandan Singh*, I. L. R., 31 Cal. 542; 8 C. W. N. 458, referred to. RAM PRATAP NEMANI *v.* EMPEROR, I. L. R., 39 Cal. 968.

Court Fees Act (VII. of 1870).

1. COURT-FEES ACT s. 31—*Summary inquiry into an offence punishable under the Workman's Breach of Contract Act—Court-fee on petition of complaint—Liability of the workman to pay.*] An offence under the Workman's Breach of Contract Act (XIII. of 1859) cannot be tried summarily. A penal enactment must be construed strictly. The proceedings of the Magistrate, under the Act, up to and inclusive of the passing by him of an order for either the repayment of the advance or performance of the contract do not constitute a trial for any offence as defined in the Criminal Procedure Code.

In a proceeding under the Workman's Compensation Act where the workman admits the advance and repays the same it is not competent to the Magistrate to make him pay to the complainant the Court-fee paid on the petition of complaint.—EMPEROR *v.* DHONDU, I. L. R., 33 Bom. 22.

2. COURT-FEES ACT (VII. OF 1870), S. 31 —*Court-fee on petition of complaint — Liob lity of the workman to pay—Workman's Breach of Contract Act (XIII. of 1859), ss. 1, 2.*] In a proceeding under the Workman's Compensation Act where the workman admits the advance and repays the same it is not competent to the Magistrate to make him pay to the complainant the Court-fee paid on the petition of complaint.—EMPEROR *v.* DHONDU, I. L. R., 33 Bom. 22.

Court Fees Act (*contd.*)—

3. COURT-FEES ACT (VII. OF 1870), S. 31 —*Power of Appellate Court to set aside order under s. 31 of Court Fees Act.*] An order under section 31 of the Court Fees Act directing the accused who was convicted of a non-cognizable offence to repay to the complainant the fee paid by him on the complaint is not part of the sentence passed on the accused for the offence. On appeal against such conviction it is not competent to the Appellate Court to set aside the order under section 31 of the Court Fees Act —EMPEROR *v* MADDIPATLA SUBBARAYUDU, I. L. R, 31 Mad. 547.

Court—

"COURT," MEANING OF—*Offence brought under the notice of the Court in the course of a judicial proceeding—Proceeding instituted by one Munsiff for resistance to attachment of moveables in execution—Preliminary inquiry and final order by successor—Legality of order—"Judicial proceeding"—Execution proceedings—Criminal Procedure Code (Act V. of 1898) ss. 4 (m), 476.*] The word "Court" in s. 476 of the Criminal Procedure Code includes the successor of the Judge before whom the alleged offence was committed, or to whose notice the commission of it was brought in the course of a judicial proceeding. Where, therefore, the judgment-creditor brought to the notice of the Munsif, the fact of resistance to the attachment of moveables in execution of his decree, and the Munsif called upon the opposite party to show cause, but his successor, after holding a preliminary inquiry under s. 476 of the Code, ordered their prosecution for offences under ss. 183, 186, and 353 of the Penal Code: *Held*, that the order was not without jurisdiction. Action under s. 476 should, as far as possible, be prompt and expeditious and not unduly protracted. The definition of a "judicial proceeding" in s. 4 (*m*) of the Criminal Procedure Code is not exhaustive. It includes an execution proceeding; and the resistance to the attachment of moveables is, when reported or complained of to the Court, an offence brought under its notice in the course of a judicial proceeding within the meaning of s. 476 of the Code.—BAHADUR *v.* ERADATULLAH MALLICK, I. L. R. 37 Cal. 642.

Cow—

COW —*Slaughter of Cow—Open verandah —Annoyance to residents of locality – Open*

Cow (*contd.*)—

place, Meaning of—Residents or passengers—General Police Act (V. of 1861), s 34—Act for the Regulation of Police (VIII. of 1895), s. 13, being an Act to amend Act V. of 1861.] The slaughtering of a cow in an open verandah, so as to cause annoyance to the residents of the locality, and in spite of their remonstrances, is a breach of the law, being an act in an "open place" within the terms of s. 34 of Act V. of 1861 as amended by Act VIII. of 1895. The words "open place" coupled with "road, street, or thoroughfare," should not be interpreted *ejusdem generis*. It seems rather that the addition of these words was intended to have a wider significance, and this is shown by another amendment in the same section made at the same time in which the annoyance, etc., caused must be not to the residents *and* passengers, but to the residents *or* passengers. The intention of the Legislature was to extend the Act not only to passengers who would be on such a road, street, or thoroughfare, but to residents, who are not passengers.—KHAN BAPUTI DEWAN *v.* BISPATI PUNDIT, I. L. R., 27 Cal. 655.

Criminal Breach of Contract—

CRIMINAL BREACH OF CONTRACT ACT XIII. OF 1859,—S. 2—*Complaint against workman of failure to complete work—Completion of work by complainant prior to complaint—Maintainability of charge.*] An employer applied for an order under s. 2 of Act XIII. of 1859, alleging that a workman had received an advance on account of the work and had failed to perform his part of the contract. Prior to lodging the complaint, the employer had completed the work, and he claimed an order for the repayment of the advance. *Held*, that no order could be made. The section only applies when the work is uncompleted when the complaint is made. If the work has been completed when the complaint is made, the Magistrate has no jurisdiction under the section, though the employer has a remedy against the workman in the Civil Courts. *High Court Proceedings*, dated 29th March 1865, (Weir's 'Law of Offences,' 445), approved. The offence created by the act is not the neglect or refusal of the workman to perform his contract but the failure of the workman to comply with an order made by the Magistrate that the workman should repay the money advanced or perform the contract *King-Emperor* v. *Takasi Nukayya*, (I. L. R., 24 Mad 660), approved.—IN THE MATTRR OF ANUSOORI SANYASI, I. L. R., 28 Mad. 37.

Criminal Breach of Trust—

1. CRIMINAL BREACH OF TRUST—*Penal Code (Act XLV. of 1860), s. 406—Charge—Criminal Procedure Code (Act V. of 1898), ss. 222, 234.*] Where an accused person is charged with having misappropriated or committed criminal breach of trust in respect of an aggregate sum of money, the whole sum being alleged to have been wrongfully dealt with by the accused within a period not exceeding one year, the mere fact that the items composing the such aggregate sum are specified and may be more than three in number, will not render the charge obnoxious to the prohibition implied by s. 234 of the Code of Criminal Procedure. *Subrahmania Ayyar* v. *King-Emperor*, (I. L. R., 25 Mad. 61, S. C. 5 C. W. N. 866.)—EMPEROR *v.* GULZARI LAL, I. L. R., 24 All. 254.

2. CRIMINAL BREACH OF TRUST—*Penal Code, ss. 62, 406—Forfeiture.*] Forfeiture of rents and profits of the property of a convicted person, which is permitted by s. 62 of the Penal Code, should be ordered only in rare cases—those cases in which crimes of an atrocious nature is exposed or in which offences has been committed under aggravated circumstances. A case of embezzlement is not one contemplated by s. 62 of the Penal Code. *Queen* v. *Mahamed Akhir*, (12 W. R. 17 Cr.) followed.—AMRIT LAL *v.* EMPEROR, 3 A. L. J. 772.

3. CRIMINAL BREACH OF TRUST—*"Property," Meaning of the term—Penal Code (Act XLV. of 1860), s. 405—Criminal Procedure Code (Act V. of 1898), s. 95.*] *Held* that a cancelled cheque falls within the meaning of the term "property" as used in s. 405 of the Indian Penal Code even if it is worth no more than the value of the paper upon which it is written. In the matter of a conviction for criminal breach of trust, the question of the value of the property in respect of which the breach of trust is committed is, except so far as s. 95 of the Code is concerned, quite immaterial.—EMPRESS *v.* MAULA Bakhsh, I. L. R., 27 All. 28.

4. CRIMINAL BRBACH OF TRUST—*Penal Code (Act XLV of 1860), s. 409—Application on stamped paper required by law to be made for its return, Making over of a document to person entitled without the.*] A clerk in a record room made over a document forming part of a record in h custody to a person who was entitled to t document, but who would otherwise ha had to present an application on stampe paper in order to secure its return in a legal manner. *Held* that the clerk was, under the above circumstances, rightly convicted under s. 409 of the offence of criminal breach of trust by a public servant.—EMPEROR *v.* GUNGA PRASAD, I. L. R., 27 All. 260.

Criminal Breach of Trust (*contd.*)—

5. CRIMINAL BREACH OF TRUST—*Criminal Procedure Code, ss. 222, 234—Joinder in one trial of charges for two distinct items with another for a gross sum, is not illegal—Construction of statute.*] Under s. 222 of the Code of Criminal Procedure, a charge of criminal breach of trust in respect of a gross sum without specifying the items, is a charge for one offence within the meaning of s. 234. S 222 of the Code of Criminal Procedure does not apply only to cases where there is a general deficiency and the prosecution is unable to specify the particular items of the deficiency, but also to cases where the items may be, but are not, specified. The joinder in one trial of charges of criminal breach of trust in respect of two distinct items with a charge in respect of a gross sum (the items constituting which may be but are not specified) is a joinder of only three charges, and is not bad as contravening the provisions of s 234 of the Code of Criminal Procedure. "The essence of a code is to be exhaustive on the matter in respect of which it declares the law and it is not the province of Judge to disregard or go outside the enactment according to its true construction." *Subramania Ayyar* v. *King Emperor* (I L. R., 25 Mad. 61), distinguished.—THOMAS *v* EMPEROR, I. L. R., 29 Mad. 558.

6. CRIMINAL BREACH OF TRUST—*Refusal to pay to a person money claimed by another—False claim — Suit brought by person claiming—Penal Code (Act XLV. of 1860), s. 406.*] An accused ; erson should not be convicted of criminal breach of trust on refusing to give to the complainant money which is claimed by another person as well as by the complainant, and which the accused denies is due to the complainant. The fact that that other person has brought a suit to recover the amount claimed by him against the accused is a complete answer to the charge of criminal breach of trust against the accused, and to the findings of the Courts that the claim made by that other person was a false claim. — RAJ KISHORE PATTER *v.* JOY KRISHNA SEN, I. R., 28 Cal. 362.

7. CRIMINAL BREACH OF TRUST—*Dishonest conversion — Partnership—Liability of a partner to account for partnership money—Penal Code (Act XLV. of 1860) s. 406.*] A partner is entitled to be called upon for an account of the expenditure of the money, which he has received, and it is open to him to spend the money received by him and to account for it in dealing with the partnership. Where it was not satisfactorily made out that this was not done, and could not be made out in the absence of a proper demand for accounts, it was *held* that there was no dishonest conversion, whch would justify his conviction under s. 406 of the Penal Code.—DEBI PRASAD BHAGAT *v.* NAGAR MULL, I. L. R., 35 Cal. 1108.

Criminal Breach of Trust (*contd.*)—

8. CRIMINAL BREACH OF TRUST—*Breach of trust of gross sum—Criminal Procedure Code (Act V. of 1898) ss. 222, 234—Charge—Penal Code (Act XLV. of 1860) s 408.*] Where an accused person was charged under s 408 of the Penal Code with having committed criminal breach of trust in respect of a gross sum of money misappropriated by him within the period of one year and the charge not only specified the gross sum taken and the dates between which it was taken, but also set out the items, twenty-two in number, composing such gross sum giving the dates and the amount alleged to have been misappropriated on each date :—*Held*, that the charge came within the provisions of clause 2 of s. 222 of the Criminal Procedure Code. *Held*, also, that by specifying the items composing the gross sum the charge went beyond what was necessary and was to that extent favourable to the accused. *Emperor v. Gulzari Lal*, I. L. R., 24 All. 254 followed. — SAMIRUDDIN SARKAR *v.* NIBARAN CHUNDRA GHOSE, I. L. R, 31 Cal. 928.

Criminal Breach of Trust by Servant.—

CRIMINAL BREACH OF TRUST BY SERVANT—*Papers ordered to be destroyed—Property—Appropriation of papers by servant—Penal Code (Act XLV. of 1860), ss. 95, 408—Criminal Procedure Code (Act V. of 1898), s. 432.*] The accused, a servant, was ordered by his employers in Calcutta to take certain bags of papers and forms belonging to them to their yard in Garden Reach, and there to burn and destroy them. Instead of doing this the accused brought some of them to Bow Bazar in Calcutta. *Held*, that the act of the accused did not amount to criminal breach of trust under s. 408 of the Penal Code. *Empress* v. *Wilkinson* (2 C. W. N. 216) followed. *Held*, also, that s. 95 of the Penal Code has no application, unless the act in question would amount to an offence under the Code, but for the operation of that section. — EMPEROR *v.* PREO NATH CHOWDHRY, I. L. R., 29 Cal 489.

Criminal Court—

CRIMIMAL COURT—*Jurisdiction—Deputy Magistrate — District Magistrate — Subordinate Court — Cognizance—Process.*] Where on a police report cognizance was taken by a Joint Magistrate (acting for the District Magistrate) of an offence alleged

Criminal Court (*contd.*)—

to have been committed by several persons, and the case was made over to a Deputy Magistrate for disposal, and the Deputy Magistrate tried and convicted some of the accused persons mentioned in the original complaint, and on his refusal to proceed against the rest of the accused, the Joint Magistrate ordered a summons to issue against them:—*Held, per* HENDERSON, J. The following propositions may be deduced from the authorities quoted:—(*i*) That the order of the Deputy Magistrate refusing to issue process on the ground that it was unnecessary to take further action, amounted to a discharge; (ii) that the order making over the case to the Deputy Magistrate for disposal was an order making over the whole case mentioned in the original Police report to the Deputy Magistrate; (iii) that until the District Magistrate had withdrawn the case so made over from the file of the Deputy Magistrate to that of his own Court, he had no power to make any order save an order for further enquiry under s. 437 of the Criminal Procedure Code. *Held*, *per* GEIDT, J., that the case having been transferred to the Deputy Magistrate, that Officer alone had jurisdiction to deal with any application for a summons, until the case was withdrawn from his cognizance; the order of the Joint Magistrate to issue a summons was, therefore, not warranted by law. *Golapdi Sheikh* v. *Queen-Empress*, I. L. R., 27 Cal. 979. *Moul Singh* v. *Mahabir Singh*, 4 C. W. N. 242, and *Radhabullav Roy* v. *Benode Behari Chatterjee*, I. L. R., 30 Cal. 449, referred to.—AJAB LAL KHIRHER *v.* EMPRROR, I. L. R., 32 Cal. 783.

Criminal Intimidation—

CRIMINAL INTIMIDATION—*Threat to ruin another by cases—"Injury"—Penal Code (Act XLV. of 1860), ss. 44 503 and 506*] In order to convict a person of criminal intimidation under s. 506, of the Penal Code, it must be found that there was a threat by him to another person of injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. Where the petitioner who threatened to ruin the complainant by cases was convicted of criminal intimidation under s. 506 of the Penal Code: *Held*, that the conviction could not stand. Had the threat been to ruin the complainant by false cases, the offence of criminal intimidation would have been committed; but as the threat was to ruin him by cases, it could not be assumed that by cases were meant false cases. If the cases were not false, the mere fact that they were instituted for the purpose of persecuting the complainant would not bring them within the definition of the term "injury."—JOWAHIR PATTAK *v.* PARBHOO AHIR, I. L. R., 30 Cal. 418.

Criminal Intimidation (*contd.*)—

Criminal Procedure Code—

1. CRIMINAL PROCEDURE CODE—*ss. 4, 190, 192, 195 and 476—Act XLV. of 1860 (Indian Penal Code), s. 193—Complaint—Procedure*] An Assistant Collector trying a rent suit came to the conclusion that the plaintiff had committed perjury, and accordingly submitted the record to the Collector of the District "for starting a case under s. 193, Indian Penal Code." The "Collector" ordered "that a case under s. 193 of the Indian Penal Code be initiated against Sundar Sarup and made over for decision to Maulvi Abdul Rafi ud din, Magistrate of the first class." *Held* that although the order of the Assistant Collector could not be regarded as an order under s. 476 of the Code of Criminal Procedure, it fell within the definition of a complaint, and the Collector, who was also the District Magistrate, had power as Magistrate to take action upon it and pass the order which he had passed. *In the Matter of the petition of Alamdar Husain*, I. L. R., 23 All. 249 followed.—EMPEROR *v.* SUNDER SARUP, I. L. R., 26 All 514.

2. CRIMINAL PROCEDURE CODE—*s 4 (r)—Act XVIII. of 1879 (Legal Practitioners Act), s. 9—Mukhtars—Authority of mukhtar to practice in Criminal Courts.*] A mukhtar is not entitled to practise generally and as of right in Criminal Courts, but can act only when he has received the permission of the Court to act in any particular proceeding—Anant Ram. IN THE MATTER OF THE PETITION OF—, I. L. R., 30 All. 66

3. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 21, cl. (2), and 526, cl. (ii)*—See PRESIDENCY MAGISTRATES' COURTS. I. L. R., 35 Mad. 739.

4 CRIMINAL PROCEDURE CODE, (ACT V. OF 1898)—*ss 36, 107—Magistrate to whom person is not sent under s. 107 (3) cannot exercise the power of committing to custody under s. 107 (4)—S. 36 does not confer such power.*] A Magistrate has no jurisdiction to remand a person to custody under s. 107 (4) of the Criminal Procedure Code when such person is not sent to him by another Magistrate under s 107 (3). S. 36 of the Code cannot, when read with s. 107 (3) be construed as conferring such jurisdiction on a District Magistrate—CHIDAMBARAM PILLAI *v.* EMPEROR, 31 Mad. 135.

5. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 65, 105—Bombay Prevention of Gambling Act (Bom. Act IV. of 1887), ss 4, 5, 6, 7—Gambling—Keeping a common gaming-house—Presumption under s. 7 of the Act.*] Where the Bombay Prevention

Criminal Procedure Code (*contd*)

of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the person to whom and the conditions under which such warrant may be issued can apply for the purposes of s. 7 of the Act. The authority, the persons and the conditions must be respectively those specifically mentioned in s 6 of the Act and no other. But the special provision in s. 6 would still be subject to the general provisions of ss. 65, and 105 of the Code.—EMPEROR *v.* FERNAD, I. L. R., 31 Bom 438.

6. CRIMINAL PROCEDURE CODE—*ss. 87, 88 and 89—Absconding offender—Sale of property of absconder—Illegal sale—Suit to recover property sold from auction-purchaser—Jurisdiction.*] Where the property of an absconding offender was attached and sold by a Court purporting to act under s. 88 of the Code of Criminal Procedure and it turned out that the procedure culminating in the sale was irregular and illegal, it was *held* that the Civil Courts had jurisdiction to entertain a suit by the owner of property so sold to recover the same in the hands of a purchaser.—MIAN JAN *v.* ABDUL, I. L. R., 27 All. 572.

7. CRIMINAL PROCEDURE CODE—*s. 103—Evidence of search apart from search list—Evidence Act I. of 1872, s. 91—"Matter required by law to be reduced to the form of a document"*] When a search has been conducted under s 103, Criminal Procedure Code, evidence can be given regarding the things seized in the course of the search and regarding the places in which they were found in addition to the evidence of the list which the law directs to be drawn up relating to the particulars of the property found. The words in s. 91, Indian Evidence, Act I. of 1872 "any matter required by law to be reduced to the form of a document" could not have been intended by the legislature to mean observations of physical facts which under the ordinary law has to be proved by the testimony in Court.—SOLAI NAIK *v.* EMPEROR, 34 Mad 349.

8. CRIMINAL PROCEDURE CODE—*s. 106—Sentence, enhancement on appeal—Maintaining a sentence in its entirety though acquitting on some of several charges is enhancement—Appellate Court cannot make an order for security when original conviction not by one of the Courts specified in s. 106.*] Where the Magistrate convicted the accused of two distinct offences

Criminal Procedure Code (*contd.*)—

and passed only a single sentence for both and the Appellate Court acquitting the accused of one of the offences maintained the sentence in its entirety:—*Held*, that this amounted to an enhancement of the sentence passed for the offence, the conviction for which alone was maintained. An order for security under s. 106 of the Code of Criminal Procedure cannot be made by the Appellate Court unless the conviction appealed against was by a Court of the description specified in the first paragraph of the section.—PARAMASIVA PILLAI *v.* EMPEROR, 30 Mad. 48.

9. CRIMINAL PROCEDURE CODE—*security to keep the peace—Unlawful assembly—Criminal Procedure Code (Act V. of 1898), s. 106—Penal Code (Act XLV. of 1860), s 143.*] An order under s. 106 of the Criminal Procedure Code upon a conviction under s. 143 of the Penal Code is illegal.—RAJ NARAIN ROY *v.* BHAGABAT CHUNDER NANDI I. L. R., 35 Cal. 315.

10. CRIMINAL PROCEDURE CODE—*s. 106—Security to keep the peace—"Offence involving a breach of the peace"—Mischief by removing land mark—Act XLV. of 1860 (Indian Penal Code), s. 434.*] *Held* that an offence "involving a breach of the peace" mentioned in s. 106 of the Code of Criminal Procedure, does not mean only an offence which necessarily involves a breach of the peace or of which a breach of the peace forms an ingredient, but includes such an offence as in common knowledge is ordinarily or very probably the occasion of a breach of the peace, as, for example, the removal of a land-mark. *Baidya Nath Majumdar* v. *Nibaran Chunder Gope*, I. L R., 30 Cal. 93; *Arun Samanta* v. *Emperor*, I. L. R, 30 Cal. 366, *Raj Narain Roy* v *Bhagabat Chunder Nandi*, I. L. R., 35 Cal. 315, and *Muthiah Chetti* v. *Emperor*, I. L. R., 28 Mad. 190, dissented from.—EMPEROR *v.* MANICK RAI, I. L. R., 33 All. 771.

11. CRIMINAL PROCEDURE CODE—*s. 106 (3)—Order for security cannot be made by Appellate Court when original conviction not by one of the Courts specified in the section.*] An order for security cannot be made under s. 106 (3) of the Code of Criminal Procedure by a Court of Appeal or Revision which is one of the Courts specified in the section, when confirming the original conviction of a Court which is not one of those specified therein.—*Muthia Chetty* v. *Emperor*, (I. L. R., 29 Mad. 190), referred to and doubted.—DORASAMI NAIDU *v.* EMPEROR, 30 Mad 182.

Criminal Procedure Code (*contd.*)—

12. CRIMINAL PROCEDURE CODE,—*s. 106 (3)—Security to keep the peace—Powers of appellate court not limited by jurisdiction of original court — Act XLV. of 1860 (Indian Penal Code) sections 71, 147, 149, 325—Separate sentences.*] The power conferred upon an appellate court by clause (3) of section 106 of the Code of Criminal Procedure is not limited in any way by the powers exercisable by the original court which tried the case. *Emperor* v. *Bhausing Dhumal Singh*, I. L. R., 33 Bom. 33. followed. *Muthiah Chetti* v. *Emperor*, I. L. R., 29 Mad. 190; *Paramasiva Pillai* v. *Emperor*, I. L. R., 30 Mad. 48; *Dorasami Naidu* v. *Emperor*, I. L R., 30 Mad. 182, and *Emperor* v. *Momin Molita*, I. L. R., 35 Cal. 434, dissented from. *Held* also that where in the course of a riot grievous hurt was committed the accused might be lawfully convicted of separate offences under sections 147 and 325 read with 149 of the Indian Penal Code and sentenced separately for each offence. *Queen-Empress* v. *Bisheshar*, I. L. R., 9 All. 645 followed —EMPEROR *v.* DHARAM DAS, I. L. R., 33 All. 48.

13. CRIMINAL PROCEDURE CODE (ACT V. OF 1898),—*s. 106 (3)—Order to furnish security—Order can be passed by the appeal Court—Jurisdiction of the appeal Court.*] Section 106, clause 3, of the Criminal Procedure Code (Act V. of 1898) makes it clear that the order for security may be made in appeal whether the original Court had jurisdiction to pass such an order or not. The word "also" in the clause plainly implies that the order may be independently made by those Courts as well as by the original Courts in the first clause; and it is neither suggested nor implied that the powers of the original Court should in any way control or limit those of the appellate or revisional authority. *Mahmudi Sheikh* v. *Aji Sheikh* (1894) 21 Cal. 622; *Mathiah Chetti* v. *Emperor* (1905) 29 Mad. 190 and *Paramasiva Pillai* v *Emperor* (1906) 30 Mad 48, dissented from. —*Dorasami Naidu* v. *Emperor* 30 Mad. 182, referred to with approval —EMPEROR *v.* BHAUSING, 33 Bom. 33.

14. CRIMINAL PROCEDURE CODE—*s. 107 —Security to keep the peace—Security demanded in respect of an act which was legal, although others might thereby have been led to break the peace.*] To justify an order under section 107 of the Criminal Procedure Code the Magistrate must believe that the person against whom he makes the order is about to commit a breach of the peace or to disturb the public tranquility or to do some *wrongful* act that may occasion a breach of the peace. The fact that a Muhammadan in the exercise of his legal right to kill cows may perhaps give offence to his Hindu neighbours and induce them to commit a breach of the peace is no ground for binding over the Muhammadan. *Shahbaz Khan* v. *Umrao Puri*, I. L. R., 30 All. 181 referred to.—EMPEROR *v.* MUHAMMAD YAKUB, I. L. R., 32 All. 571.

15. CRIMINAL PROCEDURE CODE—*s. 107, 145—Security to keep the peace—Dispute concerning land likely to lead to a breach of the peace—Procedure.*] Where there exists a dispute relating to immovable property which is likely to lead to a breach of the peace, the magistrate concerned is not necessarily bound to proceed under section 145 but can take action—and this may some times be the better course—equally section 145 of the Code of Criminal Procedure. *Sheoraj Roy* v. *Chatter Roy*, I. L. R., 32 Cal., 966. and *Emperor* v. *Ram Baran Singh*, I L. R., 28 All., 406, followed. *Mahadeo Kunwar* v. *Bisu*, I. L. R., 25 All., 537, distinguished. *Balajit Singh* v. *Bhoju*, I. L. R., 35 Cal., 117, not followed.—EMPEROR *v.* THAKUR PANDE, I. L. R., 34 All 449.

16. CRIMINAL PROCEDURE CODE—*s. 107 —Security for keeping the peace—Evidence as to likelihood of breach of the peace.*] *Held* that facts which might be taken to establish the probability of certain persons disturbing the public tranquility at a particular annually recurring festival, would afford no ground after such festival had passed without the public tranquility having been disturbed, for binding over such persons to keep the peace with a view to the possibility of their creating a disturbance at the next recurrence of the festival. *Uma Churn Santra* v. *Beni Madhub Roy*, 7 C. L R., 352, referred to —BASDEO. IN THE MATTER OF THE PETITION OF—, I. L. R., 26 All. 190.

17. CRIMINAL PROCEDURE CODE—*s. 107 —Security to keep the peace—Circumstances in which the performance of religious ceremonies may amount to a wrongful act likely to occasion a breach of the peace.*] *Held* that persons who performed religious ceremonies in a place not set apart for the purpose and where no such ceremonies had been performed before, and who did so with the deliberate intention of triumphing over, insulting, and wounding the religious feeling of their neighbours, committed a wrongful act and one which might probably occasion a breach of the peace or disturb the public tranquility within the meaning of section 107 of the Code of Criminal Procedure.—EMPEROR *v.* MURLI SINGH, I L. R., 33 All. 775.

Criminal Procedure Code (*contd.*)—

18. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 107, 112, 117—Order for security not to be made without recording legal evidence.*] An order requiring a a person to furnish security has the effect of a conviction, as the person so required is liable to imprisonment if he fails to comply with the order. Such an order ought not to be passed without formal evidence being recorded. *Reg.* v. *Jinji Limji*, (6 B. H. C. Cr. C. I.), referred to. *Reg.* v. *Talpatram Pamabhai*, (5 B. H. C. R. Cr. C. 105), referred to.—PRATHIPATI VENKATASAMI v. EMPEROR, 30 Mad., 330.

19. CRIMINAL PROCEDURE CODE—*s. 107, 118 and 406—Security for keeping the peace — Appeal*].—*Held* that no appeal will lie from an order under section 118 of the Code of Criminal Procedure requiring security to be furnished for keeping the peace.—CHET RAM. IN THE MATTER OF THE PETITION OF—, I. L. R. 27 All. 613.

20. CRIMINAL PROCEDURE CODE (ACT V. OF 1898) —*ss 109, 123, 397—Penal Code (Act XLV. of 1860), s. 329—Concurrent sentences —Consecutive sentences*] The accused was proceeded against under s. 109 of the Criminal Procedure Code, and sentenced on the 6th July 1909, under s. 123 of the Code, to rigorous imprisonment for nine months, in default of security for good behaviour. He was then tried for an offence of theft committed by him in November 1908, and was, on the 17th August 1909, sentenced to suffer rigorous imprisonment for three months: the second sentence was directed to take effect on the expiry of the first sentence. *Held*, that the two sentences ought not to run consecutively; but must run concurrently.—EMPEROR *v* ARJUN, I. L. R., 34 Bom. 326.

21. CRIMINAL PROCEDURE CODE *s. 110—Security for good behaviour — Order for security passed upon failure of charge of a substantive offence against the persons bound over.*] Eight persons were sent up for trial on a charge of dacoity and were acquitted, and an attempt to prove a case against them under s. 400 of the Indian Penal Code was also unsuccessful *Held* that these circumstances were not in themselves a bar to proceedings being shortly afterwards initiated against the person acquitted under s. 110 of the Code of Criminal Procedure. *Alep Pramanik* v. *King-Emperor*, 11 C. W. N. 413, distinguished.—EMPEROR *v*. Raj Karan, I. L. R., 32 All. 55.

22. CRIMINAL PROCEDURE CODE, (ACT V. OF 1898).—*s. 110—Evidence of general repute inadmissible to prove charge under s. 117.*] Where a person is solely charged under s. 110, clause (*f*), Criminal Procedure Code, Act V. of 1898, evidence of general repute is inadmissible to prove that he is a desperate and dangerous character. A provision of law which is an exception to the general rules of evidence must be only applied to the cases to which it is confined by the legislature. No argument can therefore be deduced from the admissibility of evidence of general repute under s. 117, Criminal Procedure Code. — MOTHU PILLAI *v.* EMPEROR, 34 Mad. 255.

Criminal Procedure Code (*contd.*)—

23. CRIMINAL PROCEDURE CODE—*s. 110—Security for good behaviour—The taking of sureties without personal bonds or recognizances illegal.*] *Held* that there is no provision of law by which a person required to find security to be of good behaviour can be called upon to provide sureties for his good behaviour without at the same time entering into his own bond for that purpose.—EMPEROR *v.* UDMI, I. L. R., 27 All. 262.

24. CRIMINAL PROCEDURE CODE—*ss. 110 and 526—Security for good behaviour—Transfer.*] *Held* that proceedings under s. 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the district within which such proceedings have been lawfully instituted. *In the Matter of the petition of Amar Singh*, I. L. R., 16 All. 9, and *In the Matter of the petition of Gudar Singh*, I. L. R., 19 All. 291, followed.—EMPEROR *v.* MAHENDRA SINGH, I. L. R., 30 All. 47.

25. CRIMINAL PROCEDURE CODE—*ss. 110, 112, 190, 191 and 526—Transfer—Security for good behaviour.*] Where a Magistrate refused to admit to bail a person against whom proceedings were pending under s. 110 of the Code of Criminal Procedure on the ground that "the accused is said to be a dangerous and violent man, who might use his liberty for the purpose of intimidating witnesses," the High Court declined to direct a transfer of the proceedings. Magistrates are left a very wide discretion as to the kind of information upon which they may act in instituting proceedings under Chapter VIII. of the Code, and they are not bound to disclose its source. The provisions of s. 190 (*c*) and s. 191 do not apply to such proceedings.—MITHU KHAN. IN THE MATTER OF THE PETITION OF—, I. L. R., 27 All 172.

26. CRIMINAL PROCEDURE CODE—*s. 110 and 118 - Security for good behaviour—Delegation of Enquiry into sufficiency of security.*] *Held* that it is not competent to a Magistrate who has passed an order under s 118 of the Code of Criminal Procedure to delegate to another officer the duty of enquiring into the sufficiency of

Criminal Procedure Code (*contd.*)—

of the security tendered, but such inquiry must be made by the Court by which the original order was passed. *Queen-Empress* v. *Pirthipal Singh*, Weekly Notes, 1898, p. 154, and *Emperor* v. *Tota*, I. L. R, 25 All. 272, followed.—EMPEROR *v.* BALWANT, I. L. R., 27 All. 293.

27. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 110 (e)—Abetment—Abetment of the commission of offences involving a breach of the peace—Residence—Jurisdiction.*] *Held:* That where under the orders and with the connivance of the zemindar various acts of oppression are committed, such conduct of the zemindar would bring him within the scope of clause (*e*) of s. 110, C P. C. *Held* also: That, for the purpose of proceedings under s. 110, C. P. C., a Magistrate has jurisdiction to try a person, who has a residential house and frequently resides for the purpose of his business, within the local limits of the Magistrate's jurisdiction, provided acts of oppression (the subject of the charges under s. 110) are committed, while he so resides.—KASI SUNDAR ROY *v.* EMPEROR, I. L. R., 31 Cal. 419.

28. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 110 (e), 112, 107—Enquiry under s. 107 illegal without issuing notice under s. 112.*] A Magistrate before taking action under s. 107 of the Code of Criminal Procedure is bound to issue the notice required by s. 112 and his omission to do so is an illegality which will render the subsequent proceedings invalid. A notice issued with reference to s 110 (*e*) is not sufficient as a preliminary to the Magistrate making an order under s. 107.—KRISHNASWAMI THATHACHARI *v.* VANAMAMALAI BHASHIAKAR, 30 Mad. 282.

29. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 117 (4)—Parties in conflict with one another cannot be dealt with in one enquiry—Such joinder illegal.*] Two or more persons are not 'associated together in the matter under enquiry' within the meaning of s. 117 (4) of the Criminal Procedure Code when there is a conflict between them, and they cannot therefore be dealt with in the same enquiry under the provisions of that section. Such a joinder is not a mere irregularity but an illegality which will vitiate the proceedings.—GANAPATHI BHATTA *v.* EMPEROR, 31 Mad. 276.

30. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 119, 200, 437—Security for good behaviour—Discharge by Magistrate—District Magistrate ordering fresh inquiry—Accused — Discharge — Interpretation.*] A District Magistrate can, under s. 437 of the Criminal Procedure Code, 1898, order fresh

Criminal Procedure Code (*contd.*)—

inquiry into the case of a person "discharged" by a Subordinate Magistrate under section 119 of the Code. The phrase "any accused person" as used in s. 437 is not confined in its application to a person against whom a complaint has been made under section 200 of the Code. It includes a person proceeded against under Chapter VIII. of the Code. The term "discharged" is not defined in the Code and there is no valid ground for departing in respect of it from the rule of construction that where in a Statute the same word in used in different sections it ought to be interpreted in the same sense throughout unless the context in any particular section plainly requires that it should be understood in a different sense. *Queen-Empress* v. *Mutasaddi Lal* (1898) 21 All. 107, *King-Emperor* v. *Fyasud-din* (1901) 24 All. 148 and *Queen-Empress* v. *Mona Puna* (1892) 16 Bom. 661, followed. *Queen-Empress* v. *Iman Mondal* (1900) 27 Cal. 652 and *Velu Tayi Ammal* v. *Chidambaravelu Pillai* (1909) 33 Mad. 85, not followed.—*In re* BABA YESHWANT DESAI, 35 Bom. 401.

31. CRIMINAL PROCEDURE CODE—*s. 122—Act X. of 1873 (Indian Oaths Act) s. 4—Security for good behaviour—Inquiry into fitness of surety—Power of Magistrate in such inquiry to take evidence upon oath.*] *Held* that a Magistrate in inquring under the provisions of s. 122 of the Code of Criminal Procedure into the fitness of a surety tendered in obedience to an order under Chapter VIII. of the Code, has power to record evidence upon oath or solemn affiramation *Queen-Empress* v. *Prithipal Singh*, Weekly Notes, 1898, p. 154, and *Emperor* v. *Tota*, Weekly Notes, 1903, p. 36, referred to.—EMPEROR *v.* GHULAM MUSTAFA, I. L. R., 26 All 371.

32 CRIMINAL PROCEDURE CODE—*s. 122—Security for good behaviour—Power of Magistrate to refuse to accept surety offered.*] *Held* that the fact that a proposed surety has on one occasion offended against the law and been punished for an offence under the Indian Penal Code does not of itself render such person for ever afterwards unfit to be surety for a party who is required to give security for good behaviour.—EMPEROR *v.* RAGHUNATH SINGH, I. L. R., 26 All. 189.

33. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 123—Committal to prison for failure to give security to be of good behaviour — 'Sentence of imprisonment."*] When a person is committed to prison under s. 123 of the Code of Criminal Procedure for failure to give security to be of good behaviour, he is not undergoing a

Criminal Procedure Code (*contd.*)—

"sentence of imprisonment" within the meaning of s. 397 of the Code.—EMPEROR *v.* MUTHUKOMARAN, I. L. R., 27 Mad. 525.

34. CRIMINAL PROCEDURE CODE—*ss. 123 and 397—Act IX. of 1894 (Prisons Act), s. 3 (3)—Security for good behaviour—Imprisonment on failure to find security—"Sentence."*] *Held* that where a person is ordered by a Magistrate to be 'detained in prison" pending the orders of the Sessions Judge under s 123 of the Code of Criminal Procedure such person must be considered as a person undergoing a sentence of imprisonment and not merely as an under-trial prisoner detained in custody. *Held also* that an order for imprisonment on failure to furnish security for good behaviour is a "sentence" within the meaning of s. 397 of the Code of Criminal Procedure. *Queen-Empress* v. *Diwan Chand*, Punjab Rec., 1895, Cr J., page 45, referred to.—EMPEROR TULA KHAN, I. L. R., 30 All. 334.

35. CRIMINAL PROCEDURE CODE (ACT V. OF 1898.)—*ss. 123, 397—Sentence of imprisonment on person already in prison under s 123.*] A person committed to prison under s 123 of the Code of Criminal Procedure is not undergoing a 'sentence' of imprisonment. Where such a person is convicted of an offence and sentenced to a term of imprisonment, such term cannot, under s. 397 of the Code of Criminal Procedure, be made to commence on the expiry of the period for which he has been committed to prison under s. 123, but must commence from the date of the order. *Emperor* v. *Muthukumara*, (I. L. R., 27 Mad. 525), followed. *King-Emperor* v. *Tulakhan*, (I. L. R., 30 All. 334), dissented from.—JOGHI KANNIGAN *v.* EMPEROR, 31 Mad. 515.

36. CRIMINAL PROCEDURE CODE (ACT V. OF 1898), *s. 123—Order to furnish security—Reference by Magistrate to Sessions Judge—Sessions Judge to go into merits of the case.*] In a proceeding under ss. 110 and 118 of the Criminal Procedure Code, 1898, the Magistrate ordered the accused to be bound over for a period of three years and referred the case to the Sessions Judge under clause (3) of of s. 123 of the Code. The latter confirmed the order without going into the merits of the case. *Held*, that the words of clause (3) of s. 123 of the Criminal Procedure Code, 1898, were wide enough to give discretionary power to the Sessions Judge to deal with the case on the merits and pass such orders as the circumstances of the case might require.—EMPEROR *v.* AMIR BALA, (1911) 35 Bom. 271.

Criminal Procedure Code (*contd.*)—

37. CRIMINAL PROCEDURE CODE—*s. 125—Security to keep the peace—Cancellation of bond—Power of Magistrate to send accused to jail.*] Under s. 125 of the Code of Criminal Procedure a District Magistrate may cancel a bond for good behaviour, but he is not competent to send the person whose bond is so cancelled to jail.—EMPEROR *v.* FAKHR UD-DIN KHAN, I. L. R., 33 All 624.

38 CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 125—Security to keep the peace—Power of the District Magistrate to cancel a security bond.*] A District Magistrate has power under s. 125 of the Code of Criminal Procedure to direct the cancellation of a bond to keep the peace, executed on an order by a Subordinate Magistrate, on other grounds than that the bond is no longer necessary. *Banka Behary Dey* v. *Janmejoy Dutt*, I. L. R., 32 Cal. 948 overruled.—NABU SARDAR *v.* EMPEROR, I. L. R., 34 Cal. 1.

39. CRIMINAL PROCEDURE CODE—*s. 133—Public nuisance — Construction of dam causing injury to village lands.*] A, B and C being contiguous villages, of which C lay at a lower level than A and B, the surplus water falling on A and B used to run off through certain natural channels over the lands of village C. The inhabitants of C erected a dam to keep the water from their lands, and by so doing caused flooding of and damage to the lands of A and B. *Held* that the area and number of persons affected by the action of the inhabitants of C were sufficient to justify a magistrate in treating their action as a public nuisance and taking steps to abate it under s. 133 of the Code of Criminal Procedure.—EMPEROR *v.* BHAROSA PATHAK, I. L. R., 34 All. 345.

40. CRIMINAL PROCEDURE CODE—*s 133 et seqq.—Procedure—Obstruction to a public way—Jury.*] Where, at the request of a person upon whom a notice has been served under s. 133 of the Code of Criminal Procedure a jury is appointed under s 138 of the Code, it is within the competence of the of the jury to decide as to the validity of an objection that the way alleged to have been obstructed is not a public way. It is not for the Magistrate to decide whether such an objection is raised *bona fide* before referring it to the jury. *Kailash Chunder Sen* v. *Ram Lall Mittra*, I. L. R., 26 Cal. 869. *Held also* that there is no special procedure laid down by the Code to be adopted by jury appointed under s 138 in coming to a finding on the questions submitted to them *Queen-Empress* v. *Khushali Ram*, I. L. R. 18 All. 158, referred to *Held also* that a person who has applied for a jury under s. 138 is bound by the verdict of the

Criminal Procedure Code (*contd.*)—

jury, and cannot afterwards raise such a plea as that the obstruction was caused in the exercise of a *bona fide* claim of right. *In the Matter of the petition of Lachman*, Weekly Notes, 1900, p. 180, followed. —EMPEROR *v.* RAM BILAS, I. L. R., 30 All. 364.

41. CRIMINAL PROCEDURE CODE—*s. 133, 136, 140—Where order under s. 133 not complied with, prosecution sustainable under s. 136 without notice under s. 140—Order under s. 133 cannot direct works to be done which are not necessary for the safety of the public.*] Where an order issued by a Magistrate under s 133 of the Criminal Procedure Code is not complied with or protested against within the time fixed by the order, a prosecution of the person disobeying under s. 136, is sustainable without notice under s. 140. Where a well adjoining a road is dangerous to the public as well as to the existence of the road, an order under s. 133 can direct the construction of such works only as are necessary for the safety of the public and not of works necessary for the safety of the road. *Queen-Empress* v. *Bishamber Lal*, (I. L. R., 13 All. 577), approved.—ALUVALA GURUVIAH *v.* EMPEROR, 31 Mad. 280.

42. CRIMINAL PROCEDURE CODE—*ss. 133 and 137—Order to show cause—Accused appearing—Starting proceedings.*] Where a person ordered to show cause under s. 133, Criminal Procedure Code, appears and shows cause, the Magistrate is bound to take evidence as in a summons case *i.e.*, the complainant has to start proceedings by adducing evidence and then the party showing cause may produce his own evidence, if so advised. When this has been done, but not before, the Magistrate can make the conditional order absolute if he finds sufficient reason for doing so. *Srinath Roy* v. *Ainaddi Halder*, I. L. R., 24 Cal. 395, followed —KING-EMPEROR *v.* HINGU, I. L. R, 31 All. 453.

43 CRIMINAL PROCEDURE CODE—*ss. 145 and 435—Statute 24 and 25 Vict., Cap. CIV., s. 15—Order under s 145, Criminal Procedure Code—Revision—Powers of High Court.*] Where proceedings are in intention, in form and in fact proceedings under Chapter XII. of the Code of Criminal Procedure by a Magistrate empowered duly to act under that chapter, the High Court has no power to call for those proceedings either under the Code or under s. 15 of the Indian High Courts Act, 1861, *Daulat Koer* v. *Romeswari Koeri*, I. L. R, 26 Cal. 625. *In re Pandurang Govind*, I. L. R., 24 Bom. 527, and *Baldeo Baksh Sing* v. *Raj Balliam Singh*, 2 A. L. J. R. 274, referred to, *Maharaj Tewari* v. *Har Charan Rai*, I. L. R., 26 All 144, followed.—JHINGAI SINGH *v.* RAM PARTAP, I. L. R., 31 All. 150.

Criminal Procedure Code (*contd.*)—

44. CRIMINAL PROCEDURE CODE (ACT V. OF 1898), *s. 145—Mere delivery certificates to purchaser at Court sale without proof of delivery of actual or symbolical possession of property not sufficient to prove possession.*] A purchaser at a Court sale of immoveable properties, to whom delivery certificates have been granted, but to whom possession either actual or symbolical was not delivered cannot, on the strength of such certificates alone, be declared to be in possession of such properties in proceedings under s. 145 of the Criminal Procedure Code *Gulraj Marwari* v. *Sheik Bhatoo*, (I. L. R., 32 Cal. 796), distinguished. *Kunja Behari Das* v. *Khetro Pal Singh Roy*, (6 C. W. N. 38), distinguished.—RAGAVA AIYANGAR *v.* KRISHNASAMI AIYAR, 31 Mad. 416.

45. CRIMINAL PROCEDURE CODE (ACT V. OF 1898),—*s. 145—Possession by the manager of a joint Hindu family can be protected by a Magistrate by proceedings under s. 145 of the Code.*] The managing member of a coparcenary governed by the Mitakshara law has a recognised position of superiority with well-defined rights of management and possession independent of the consent of the other members of the coparcenary. A Magistrate has jurisdiction to protect a manager in such possession by proceedings under s. 145 Criminal Procedure Code. *Sri Mohan Thakur* v. *Narsing Mohan Thakur*, (I. L. R., 27 Cal. 259), referred to and approved.—BHASKARI KASAVARAYUDU *v.* BHASKARAM CHALAPATIRAYUDU, 31 Mad. 318.

46. CRIMINAL PROCEDURE CODE (ACT V. OF 1898),—*s. 145—Possession Title, proof Evidence.*] Evidence of title is admissible in an inquiry under s. 145 of the Code of Criminal Procedure (Act V. of 1898) to enable the Court to decide the question of actual possession, but proof of title is not proof of actual possession.—PANAGANTI PARTHASARATHY NAYANIM *v.* PALLIKAPPU VENKATASAMI REDDY, I. L. R., 34 Mad. 138.

47. CRIMINAL PROCEDURE CODE—*ss. 145, 526—Transfer "Criminal Case"—Accused person."*] *Held* that the expression 'criminal case' as used in s. 526 of the Code of Criminal Procedure includes a proceeding initiated under s. 145 of the Code and that the High Court under s. 526 has power to transfer such a proceeding from one court to another court

Criminal Procedure Code (*contd.*)—

subject to all the conditions under which a transfer can be made. *Arumuga Tegundan*, *Lolit Mohan Moitra* v. *Surja Kanta Acharjee* and *Gurudas Nag* v *Gaganendra Nath Tagore* referred to *In re Pandurang Govind Pujari* dissented from. An 'accused person' is one over whom a criminal court exercises jurisdiction. *Queen-Empress* v. *Mutasaddi Lal* followed.—JAGGU AHIR *v.* MURLI SUUKUL, I. L. R., 34 All. 533.

48. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 145—Omission of Magistrate to state grounds for passing order is an irregularity and does not render the proceedings void, if no prejudice caused thereby.*] The omission of a Magistrate, in his order initiating proceedings under s. 145 of the Code of Criminal Procedure, to state the grounds on which he is satisfied that there was a dispute likely to cause a breach of the peace, is an irregularity and will not, when the party is not prejudiced in the conduct of the inquiry by such omission, render the proceedings of the Magistrate void. Want of notice to one party in possession cannot be set up by another party who had notice and who appeared in the proceedings.—IN THE MATTER OF CHINNAPUDAYAN, I. L R., 30 Mad. 548.

49. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 145—Possession—Dispute concerning land—Jurisdiction of Magistrate—Proper question for determination—Actual possession—Decision based not on oral evidence, but on settlement proceedings.*] The only question, which a Magistrate has to decide in a proceeding under s. 145 of the Criminal Procedure Code is, as to who is in actual possession of the disputed land. Where the Magistrate, while holding that the oral evidence of actual possession was in favour of one party, proceeded to discuss and decide as to the legal effect, under the Bengal Survey Act, of a recent order of an Assistant Settlement Officer, passed in an inquiry into a boundary dispute between the parties, awarding possession to the opposite party, and also as to the maintainability under the circumstances of proceedings under s. 145 of the Code, the civil remedies available to the defeated party, the legality of the above order and his power to set the same aside, and directed the first party to be maintained in possession in accordance with such order :—*Held*, that the Magistrate had acted without jurisdiction in going into these matters instead of determining the question of actual possession on the evidence in the case — KOCHAI FAKIR *v.* ROMRSH CHANDRA BISWAS, I. L. R., 35 Cal. 795.

Criminal Procedure Code (*contd.*)—

50. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 145 — Magistrate holding inquiry under s. 145 cannot direct Subordinate Magistrate to take evidence—Order based on such evidence void as made without jurisdiction.*] A Magistrate holding an inquiry as to possession under s 145 cl. 4 of the Code of Criminal Procedure, is bound to take the evidence himself and cannot delegate to a Subordinate Magistrate the duty of recording such evidence An order of such Magistrate based solely and substantially on evidence recorded by a Subordinate Magistrate is not an order based on legal evidence and is void as made without jurisdiction. *In re Baikant Kumar* (3 C, L. R. 134), referred to. *Kotha Koer* v. *Muneswar Tewari* (I. L. R., 34 Cal 840), referred to.—ARUMUGA GOVINDAN *v.* VENKATASUBBIER, I. L. R., 31 Mad. 82.

51. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 145, 192 (2) and 529 (f)—Dispute concerning land—Jurisdiction of Magistrate—Pendency of a civil suit for possession of the disputed land—Subsistence of prohibitory order on the date of the proceeding—Transfer of case without jurisdiction—Likelihood of a breach of the peace.*] The pendency of a suit under s. 9 of the Specific Relief Act (I. of 1877) with regard to certain land in dispute does not oust the Magistrate's jurisdiction to take proceedings under s 145 of the Criminal Procedure Code in respect of the same land, if he finds reasonable grounds for apprehending a breach of the peace. The fact that on the date of the initiation of the proceedings under s. 145 of the Code there was a subsisting order under s 144, the terms of which were not before the Court, passed against the landlords in a proceeding, to which the tenants, through whom they claimed to be in possession, were not parties, does not justify the Court in setting aside the proceedings under s. 145, in respect of the same subject-matter of dispute, as without jurisdiction. A transfer by a first class Magistrate of a case under s. 145 erroneously and in good faith does not vitiate the proceedings by reason of the provisions of s. 529 (*f*). *Akbar Ali Khan* v. *DomiLal* 4 C. W. N. 821, followed. S. 145 requires that the Magistrate, before initiating proceedings thereunder, must be satisfied, on the materials before him, that there is fear of a breach of the peace with regard to some immoveable property between the parties. Where the Magistrate initiated proceedings under s. 145 on a police report on which he was satisfied that there was an apprehension of a breach of the peace, and there was evidence on the record of a probability of such breach of the peace, the

Criminal Procedure Code (*contd.*)—

High Court refused to set aside the final order as without jurisdiction. — KISHORI LAL ROY *v.* SRINATH ROY, I. L. R., 36 Cal 370.

52. CRIMINAL PROCEDURE CODE—*ss. 145 (1) and 439 (3)—Revision—Jurisdiction to interfere with an order purporting to be passed under s. 145.*] Where an order purporting to be passed under s 145 (*1*) of the Code of Criminal Procedure after evidence recorded which satisfied the Magistrate that there existed a dispute likely to occasion a breach of the peace in respect of certain immoveable property was found to be insufficient or defective in the sense that it gave no information as to the subject of the dispute and left the persons to whom it was issued quite in the dark as to the property in regard to which they had to set forth their respective claims, it was *held* that the inadequacy of such order gave the High Court jurisdiction to interfere. *Mohesh Sowar* v. *Narain Bag*. I. L. R , 27 Cal. 981, and *Sukru Dosadh* v. *Ram Pergash Singh*, (I. L. R., 30 Cal. 443), followed —MARTIN. IN THE MATTER OF THE PETITION OF --, T. A. ——, I. L. R., 27 All. 296.

53. CRIMINAL PROCEDURE CODE—*ss. 146, 439—Defect in form of written order—Jurisdiction—Revision.*] Where in proceedings under Ch. XII. of the Code of Criminal Procedure the initial order was defective in that it did not set forth the grounds for the Magistrate being satisfied of the existence of a dispute likely to cause a breach of the peace: but on the other hand both parties were fully cognizant of the matter in dispute and there was in fact danger of a breach of the peace, the High Court declined in revision to interfere with the Magistrate's order.—GUNGA SARAN SINGH *v.* BHAGWAT PRASAD, I. L. R., 32 All. 132.

54. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 147—Dispute concerning the right to act as pujari and not the right of use of land—Easements.*] S. 147 of the Criminal Procedure Code is not limited in its terms to easements, but relates to any dispute concerning the right of use of land or water. A dispute concerning merely the right to act as *pujari* in a temple, and not the right of use of the land on which it stands, is not within the scope of s. 147 of the Code. *Kader Batcha* v. *Kader Batcha Rowthan*, (I. L. R., 29 Mad. 237), not followed.—GUIRAM GHOSAL *v.* LAL BEHARI DAS, I. L. R., 37 Cal. 578.

55. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 147—Use of Water, dispute relating to—Erection of Bund by one party—Order by Magistrate for its removal under police supervision—Injunction by Civil Court restraining the opposite party from interfering with the Bund—Subsequent order by Magistrate directing its removal by the Police.*] S. 147 of the Criminal Procedure Code contemplates orders directed to the parties to the dispute, and does not enable a Magistrate to enforce his orders, passed thereunder, through the agency of the police. An order passed some time after the termination of the proceedings under s. 147 of the Code, directing the removal of a *bund* by the police is without jurisdiction. *Pasupati Nath Bose* v *Nando Lal Bose*, 5 C. W. N. 67, and *Lalit Chandra Neogi* v. *Tarini Persad Gupta*, 5 C. W. N. 335, distinguished.—DALMIR PURI *v.* KHODAD KHAN, I. L. R., 36 Cal. 923.

56. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 157, 159, 476—Investigation by Superintendent — Subsequent inquiry by Magistrate — Order for prosecution of witnesses examined in the Magistrate's inquiry—Act XLV. of 1860 (Indian Penal Code) s. 193*] The Superintendent of Police made an investigation at the direction of the Magistrate and came to the conclusion that the case was not a true one: but at the same time suggested that a Magistrate might be sent to inquire into it. The District Magistrate accordingly deputed a magistrate of the first class to inquire, who made an inquiry, which resulted in an order for the prosecution of certain witnesses who had given evidence before him. *Held* that there was no legal sanction for the inquiry held by the Magistrate, and his order for the prosecution of the witnesses was therefore invalid *In the Matter of the petition of Kandhaiya Lal*, Weekly Notes, 1899, p. 87, and *Mouli Darsi* v *Nauranji Lal*, 4 C. W. N., 351, referred to.—EMPEROR *v.* ABDUL RAHMAN, I. L. R., 32 All. 30.

57 CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 154, 155, 157, 162 and 551.* See Evidence Act ss. 25, 114, illus. (*b*), I. L. R., 35 Mad. 247.

58. CRIMINAL PROCEDURE CODE—*ss. 162, 288—Indian Evidence Act (I. of 1872), ss. 21, 157 — Evidence—Admissibility of evidence—Statements made by witness to Police and Panch—Statements made by the witness as accused before Committing Magistrate—Witness deposing to different story before Sessions Court—Corroboration of the deposition before the Committing Magistrate by statements made before the Police and the Panch—Investigating Police Officer—Deposition of, as to statements made by wit-*

Criminal Procedure Code (*contd.*)—

nesses to him—Examination-in-chief—Practice and procedure.] During the trial of an accused person, the Sessions Judge admitted into evidence and used against the accused the following statements: (1) statements made by a witness to the Police implicating the accused, (2) the same witness' statement to the Panch, (3) and his statement as an accused person made before a Magistrate, and (4) statements made by the co-accused to the Police. The witness, when he was examined before the Committing Magistrate, gave a consistent story; but he deposed to quite a different version when he was examined in the Sessions Court. The learned Judge disbelieved the changed story, and he used the witness' statements to the Police and his statements as an accused person and his statements to the Panch, by way of corroboration of what the witness had stated to the Committing Magistrate. The accused was convicted and sentenced On appeal:—*Held*, (1) that it was an error to admit statements Nos. 1 and 2 for the purpose of corroborating statements No. 3, for only the statements of witnesses made to the trying Court can be corroborated in the manner contemplated by s. 157 of the Indian Evidence Act, 1872. Previous statements might be used to corroborate or contradict statements made at the trial: not to corroborate statements made prior to the trial. (2) That statements No 2 were altogether inadmissible as evidence of the accused's guilt for they could at most be regarded as admissions by the co-accused which could possibly be used against himself, but could not be proved and used against the accused The Investigating Police Officer ought not to be allowed to depose in examination-in-chief to what the witnesses stated to him. It opens up an undesirably wide field for cross-examination and leads to the attention of the Court being diverted and distracted from the true issues Moreover it is contrary to the plain intention of s. 162 of the Code of Criminal Procedure, which is that such statements should be used, if at all, on behalf of and not against the person under trial.—EMPEROR *v.* AKBAR BADOO, I. L. R., 34 Bom 599.

59. CRIMINAL PROCEDURE CODE, (ACT V. OF 1898)—*s. 162—Bombay City Police Act (IV. of 1902), s. 63—Indian Evidence Act (I. of 1872), ss. 24 and 167—Amended Letters Patent, 1865, cl. 26—Statement made by a witness to and taken down in writing by a Police officer—Admissibility in evidence—Confession of accused, admissibility of.*] One P., an entry clerk in the General Post Office, Bombay, was charged with having committed theft in respect of

Criminal Procedure Code (*contd.*)—

a registered letter. S. a friend of the accused, had made a statement to a Police Officer which the latter had taken down in writing. At the trial S. denied having made the statement, whereupon the Presiding Judge admitted the statement in evidence both to discredit S and also as evidence against P. in that it contained statements made to the Police corroborating confessions made by P. These confessions were also used in evidence against P. On the application by P.'s Counsel, the Advocate-General certified under clause 26 of the Amended Letters Patent that the said document was wrongly admitted. On a review of the Full Bench.—*Held*, having regard to s. 162 of the Criminal Procedure Code (Act V. of 1898), the said document ought not to have been admitted or used in evidence against the accused. *Per* RUSSELL, AG. C. J.:—The document might be used to contradict the witness not by putting in the statement, but by putting it in the hands of the Police Officer to refresh his memory and to get him to contradict the statement of S. *Per* CHANDAVARKAR, J.:—It is the statement contained in the writing which only could be used and that only to impeach the credit of such witness in the manner provided by the Indian Evidence Act (I. of 1872). *Per* BATTY, J:—The writing might have been used for the purpose of refreshing the memory of the witness cross-examined as to the fact of the statement either on behalf of the prosecution or on behalf of the defence provided that it was treated by the prosecution only for the purpose of impeaching the credit or in corroboration of the witness who made it. *Per* BRAMAN, J:—The writing ought not to have been admitted at all, or its contents to have been allowed to be used by the prosecution for the nominal purpose of contradicting the witness.—EMPEROR *v.* NARAYAN RAGHUNATH PATKI, 32 Bom. 111.

60. CRIMINAL PROCEDURE CODE (ACT V. OF 1893),—*ss. 162, 154 155, 157*—See Evidence Act ss. 25, 114 illus. (*b*), I. L. R., 35 Mad. 397.

61. CRIMINAL PROCEDURE CODE—*ss. 162, 164—Right of accused to copies of statements made by Magistrate under.*] An accused person under remand is not, before the commencement of the preliminary inquiry, entitled to be furnished with copies of statements made on oath by various persons and recorded by the Magistrate under ss. 162 and 164 of Code of Criminal Procedure. No such right is conferred by the Code of Criminal Procedure and the question whether any person has a right to inspect a public document is outside the scope of the Evidence Act. Such state-

Criminal Procedure Code (*contd.*)—

ments may, however, be put to contradict the persons making them when called as witnesses and it will then form part of the record, of which the accused will be entitled to a copy after commitment There is no general principle of common law which would entitle an accused person to copies of such documents. *Queen-Empress* v. *Arumugam*, (I L. R., 20 Mad. 189), distinguished.—EMPEROR *v.* MUTHIA SWAMIYAR, I. L. R., 30 Mad. 466.

62. CRIMINAL PROCEDURE CODE—*s. 163 See Act I. of 1872 sections 8 and 24-27* I. L R., 31 All. 592.

62A. CRIMINAL PROCEDURE CODE—*s. 172 —Compromise—Assault in the course of which one of the persons assaulted received fatal injuries.*] Three persons assaulted three others, with the result that one of the persons assaulted died. *Held* that it was not competent to the survivors to compound the case with their assailants in respect of the injuries caused to the person deceased.—EMPEROR *v.* SULTAN SINGH, I. L R., 31 All. 606.

63. CRIMINAL PROCEDURE CODE—*s.* 177 *—Jurisdiction—Effect of place where offence was committed ceasing to be British territory.*] An offence was committed in March, 1910, at a place which was then part of the Mirzapur district Subsequently one of the persons alleged to have taken part in the Commission of such offence was arrested in Bengal and sent to Mirzapur, when he was committed by the Joint Magistrate to take his trial before the Court of Session. In the meanwhile the place where the offence was committed had ceased to be British territory. *Held* that this fact did not oust the jurisdiction of either the Magistrate or the District Judge of Mirzapur.—EMPEROR *v.* GANGA I. L R., 34 All. 451.

64. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 177 and 242—Bond to Keep the Peace—Enquiry, sufficiency of.*] A Magistrate proceeding under section 117, Criminal Procedure Code (Act V. of 1898), as nearly as practicable in the same way as under section 242, Criminal Procedure Code, must state to the accused the particulars of the matter against them and ask them if they can show cause why they should not be required to execute bonds :—*Held*, that the question "are you willing to execute the bonds required or do you wish for further inquiry" answered by a statement that the accused would execute bonds in not a sufficient compliance w th section 117.—PALANIAPPA ASARY *v.* EMPRROR I. L. R., 34 Mad. 139.

Criminal Procedure Code (*contd.*)—

65. CRIMINAL PROCEDURE CODE—*s. 179 —Criminal Misappropriation—Jurisdiction —'Place where consequences of act ensued."*] The word 'consequence' in section 179 of the Criminal Procedure Code means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offender as to form no part of that offence. Hence where an agent in charge of a branch shop in Sultanpur misappropriated money belonging to his principal, which should have been sent to the head office at Cawnpore, it was *held* that the courts at Cawnpore had no jurisdiction to try the agent for criminal misappropriation. *Queen Empress* v. *O'Brien*, I. L. R., 19 All. 111, and *Colville* v. *Kristo Kishore Bose*, I. L. R., 26 Cal. 746, distinguished. *Babu Lal* v. *Ghansham Das*, 5 A. L. J. 333, referred to.—GANESHI LAL *v* NAND KISHORE, I. L R , 34 All. 487.

66. CRIMINAL PROCEDURE CODE—*ss. 182 and 531—Jurisdiction—Place at which consequence of act ensues—Criminal breach of trust — Act XLV. of 1860 (Indian Penal Code), section 408.*] One M was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted money to his employers at Mirzapur. When called upon to furnish accounts, he offered to furnish Rs. 500 as a deposit, but did not submit any account. *Held* that the Courts of Mirzapur had jurisdiction to try M for whatever offence he had committed arising out of the above transactions *Queen Empress* v. *O'Brien*, I. L. R., 19 All. 411, followed. — EMPEROR *v.* MAHADEO, I. L. R., 82 All. 397.

67 CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 188—Effect of illegal arrest on trial of accused – Extradition.*] Where a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The principle upon which English cases to this effect are based underlies also section 188 of the Criminal Procedure Code (Act V. of 1898).—EMPEROR *v.* VINAYAK DAMODAR SAVARKAR, I L. R., 35 Bom. 225.

68 CRIMINAL PROCEDURE CODE—*s. 188, 227—Offence committed in Nepal territory —Certificate granted by political officer specifying a particular section of the Indian Penal Code—Trying Magistrate not debarred from convicting under another section if within the facts stated.*] A certificate granted by a political officer under section 188 of the Code of Criminal Procedure in

Criminal Procedure Code (*contd.*)—

respect of a certain set of facts will cover every charge which the facts disclosed in the proceedings will suffice to sustain. The certificate is granted on the allegation of certain facts which constitute the charge against the accused, and the trying Magistrate is not restricted to the section which is mentioned in the certificate, but at the utmost to the facts.—EMPEROR *v.* KRISHNA NATH TIWARI, I. L. R., 33 All. 514.

69. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s 195—Application for sanction to prosecute—Dismissal of the application for default—Appellate Court cannot grant sanction on appeal—Dismissal of application for default not permissible—Review of order not permissible under the Code.*] An application was made by the Public Prosecutor of Belgaum to the Subordinate Judge of Gokak for sanction to prosecute one G for offences committed in his Court. The Public Prosecutor failed to appear in the Court on the day and at the hour fixed for the hearing of the application. The Subordinate Judge dismissed the application as for default. On an application being made to review this order, the Subordinate Judge declined to do so. On appeal, however, the District Judge granted the sanction under section 195 of the Criminal Procedure Code (Act V. of 1898). *Held*, that the District Judge had no jurisdiction to accord the sanction on appeal, under section 195 of the Criminal Procedure Code (Act V. of 1898), inasmuch as there was no sanction given or refused by the Subordinate Judge. The only jurisdiction which the District Judge had under the circumstances was to revise the order passed by the Subordinate Judge dismissing the applications as for default. *Held*, further, that there was no provision in the Criminal Procedure Code (Act V. of 1898) which warranted the Subordinate Judge in rejecting or dismissing the application of the Public Prosecutor because of his failure to appear at the time the application was called on for dismissal. The Subordinate Judge was bound to consider the application on its merits, even though the party who made it was not there to help the Court. *Held*, also, that the Subordinate Judge had no power to review his order because the Criminal Procedure Code contained no provision giving jurisdiction to a Court to review orders passed under it.—*In re* GOPAL SIDDESHWAR, I. L. R., 32 Bom. 203.

70. CRIMINAL PROCEDURE CODE—*s. 195—On appeal against order granting sanction District Court has no power to remand for further injury—S. 647 of the Civil Procedure Code does not apply to proceedings under s. 195 of the Criminal Procedure Code*

Criminal Procedure Code (*contd.*)—

—Letters Patent, cl. 15—Judgment, what is.] An order of a single Judge rejecting a revision petition presented under s. 622 of the Civil Procedure Code on the ground that the objection taken therein is unfounded is a 'judgment' within the meaning of clause 15 of the Letters Patent and appealable as such. The powers conferred under s. 195 of the Code of Criminal Procedure are of a very special nature and no inherent jurisdiction can be attributed to any Court in the exercise of such powers, unless it is incident to their proper exercise. A Court to which an appeal is presented against an order granting or refusing sanction under s. 195 of the Code of Criminal Procedure has no power to remand the case for a fresh inquiry. S. 647 of the Code of Civil Procedure does not make the provisions of the Code of Civil Procedure applicable to proceedings under s. 195 of the Code of Criminal Procedure.—RAMA AYYAR *v.* VENKATA CHELLA PADAYACHI, I. L. R., 30 Mad. 311.

71. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 195—Charter Act—Revocation of sanction—Power of High Court.*] Under sub-s. (6) of s. 195 of the Code of Criminal Procedure a petition by way of appeal lies to the High Court in every case in which a Civil or Criminal Court subordinate to it, within the meaning of sub-s. (7) (*a*) gives or refuses a sanction, whether in respect of an offence committed before it or of one committed before a Court subordinate to it, and, in the latter case, whether it gives a sanction refused by the Subordinate Court or revokes a sanction accorded by such Court. Under clauses (*b*) and (*c*) of sub-s (1), the sanction may be accorded in the first instance by the Court to which the Court in which the offence was committed is subordinate, even though no application for sanction has been made to the latter Court. For the purposes of clauses (*b*) and (*c*) sub-s. (1), a sanction accorded by the High Court would operate as a sanction accorded by a Court subordinate to it, such as the District Court. An order passed by an Appellate Court is, in law, the order which ought to have been passed by the Subordinate Court, and will, in consequence, have the same efficacy and operation as the order which ought to have been passed by the latter. S. 439 of the Code of Criminal Procedure provides that the High Court, as a Court of revision, may exercise the powers conferred on a Court of appeal by s. 195. In a case in which both the Original Criminal Court and the Appellate Criminal Court refuse sanction, the High Court, as a Court of revision, may call for the record and, if the refusal proceeds on an error of law, it may accord the sanction which ought to have been granted by

Crfminal Procedure Code (*contd.*)—

the Appellate Criminal Court and such sanction will be operative for the purposes of clauses (*b*) and (*c*) of sub-s. (1). A plaintiff in a suit applied for attachment before judgment and filed an affidavit in support of that application in which he stated that the defendants intended to alienate their properties with *mala fide* intentions. He did not state in the affidavit that this statement was based on what he had been told. He was, however, orally examined, and then deposed that he had heard that the defendants were intending to alienate property. The petition was dismissed. Thereupon sanction was asked for, the Subordinate Judge according sanction only for an offence under s. 199 of the Indian Penal Code, and refusing sanction for offences under ss. 193, 196 and 200. The sanction accorded was not based on the oral evidence but on the statement in the affidavit. The defendants appealed (under s. 195 of the Code of Criminal Procedure), against the refusal to grant sanction for offences under ss. 193, 196 and 200, to the District Judge, who accorded sanction for the prosecution of the petitioner under those sanctions also:—*Held*, on revision, that the District Judge had not exercised a sound discretion in according the sanction, for although the petitioner had not stated in his affidavit that the statements therein were made on hearsay, he had stated so in his oral evidence and the affidavit was not inconsistent with that evidence. Whether a Village Magistrate is a magistrate within the meaning of s. 197, clause (*a*) of the Code of Civil Procedure, as that expression is defined in the Imperial General Clauses Act, *Quære*.—PALANIAPPA CHETTI *v.* ANNAMALAI CHETTI, I. L. R., 27 Mad. 223.

72. CRIMINAL PROCEDURE CODE—*s. 195 — Sanction to prosecute — Appeal.*] *Held* that when sanction to prosecute has been granted by a Court under the provisions of s. 195 of the Code of Criminal Procedure, only one appeal from such order will lie under that section. *Salig Rani* v. *Ramji Lal*, I. L. R., 28 All. 554, *Emperor* v. *Serh Mal*, Weekly Notes, 1908, p. 102, and *Muthuswami* v. *Mudali* v. *Venni Chetti*, I. L. R., 30 Mad. 382 referred to.—KANHAI LAL *v.* CHHADAMMI LAL, I. L. R., 31 All. 48

73. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 195, 235—No sanction required when the actual offence charged is not one for which sanction is necessary under s. 195 of the Code of Criminal Procedure, though the facts alleged disclose an offence for which no prosecution can be entertained without sanction under that section.*] The agent of a decree-holder accompanied an Amin to execute the decree and was obstructed and

Criminal Procedure Code (*contd.*)—

assaulted in endeavouring to effect execution. The agent applied to the Court for sanction to prosecute for an offence under s. 186, Indian Penal Code, and on the sanction being refused, he presented a complaint against the party who assaulted him for offences under ss. 323 and 355 of the Indian Penal Code:—*Held*, that no sanction under s. 195 of the Code of Criminal Procedure was necessary, although the facts alleged disclosed an offence under s. 186 of the Indian Penal Code. When in the course of the commission of an offence for which no prosecution can be entertained without sanction, other offences, which may form the subject of separate charges under s. 235 of the Code of Criminal Procedure, and for which no sanction is required, are committed, a complaint in respect of the latter offences can be entertained without sanction being obtained for the former.—KRISTNA PILLAI *v.* KRISHNA KONAN, 31 Mad. 43.

74. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 195, 476 — Indian Penal Code (Act XLV. of 1860), ss. 193, 210 — Sanction to prosecute—Refusal by Subordinate Judge—District Judge on appeal may institute proceedings under s. 476—Court — Interpretation.*] An application was made to a Subordinate Judge for sanction to prosecute *L.* for offences punishable under sections 193 and 210 of the Indian Penal Code (Act XLV. of 1860). The Subordinate Judge refused to grant the sanction. On appeal, the District Judge varied the order and directed the lower Court to prosecute *L* for an offence under s. 210 of the Indian Penal Code. *Held*, that the District Judge had jurisdiction to pass an order under s. 476 of the Criminal Procedure Code (Act V. of 1898); that it was not competent to him to direct the Subordinate Judge to prosecute *L* for an offence under s. 210 of the Indian Penal Code and that he should himself have proceeded according to clause (*b*) of s. 195 read with section 476 of the Criminal Procedure Code. The word "Court" in s 476 of the Criminal Procedure Code includes within its scope the other Courts to which such Court is subordinate referred to in section 195 of the Code. *Begu Sing* v. *Emperor*, 34 Cal. 551, dissented from.—*In re* LAKSHMIDAS LALJI, I. L. R., 32 Bom. 184.

75. CRIMINAL PROCEDURE CODE—*ss. 195, 476 — Sanction to prosecute—Sanction set aside by superior court and order for prosecution under s. 476 substituted—Jurisdiction.*] *Held* that a court hearing an application under s. 195 of the Code of Criminal Procedure to revoke sanction for a prosecution granted by a subordinate court

Criminal Procedure Code (*contd.*)—

has jurisdiction to set aside the order of the subordinate court and direct a prosecution under s. 476 of the Code. *In the Matter of the petition of Mathura Dass*, I. L. R., 26 All. 80, overruled.—CHADAMMI *v.* LALTA PRASAD I. L. R., 34 All. 602.

76 CRIMINAL PROCEDURE CODE—*s. 195—Sanction to prosecute—Jurisdiction to grant or revoke sanction.*] Application was made under s. 195 of the Code of Criminal Procedure to a Magistrate of the 3rd class, who tried the original case for sanction to prosecute the complainant. This application was refused. A further application was then made to the District Magistrate, who granted sanction. *Held* that the Sessions Judge had no power to set aside the order of the District Magistrate granting sanction.—RAM DENI *v.* NAND LAL RAI, I. L. R., 30 All. 109.

77. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 195, 196, 197, 215, 436—Sanction—Notice to accused—Reference to High Court — Revisional powers.*] Section 215 of the Code of Criminal Procedure is not applicable to a case in which a commitment in question has not been made under any one of the four sections therein specified, but has been made under the directions of the High Court under s. 526 (1) IV. An order of a Sessions Judge or District Magistrate passed under s. 436, directing commitment, may be quashed by the High Court in the exercise of its revisional powers, though not under s 215. But an order passed by the High Court itself under s. 526 cannot be so revised. Sanction accorded by Government under s. 197 is not null and void for the reason that no notice was given to the accused to show cause why it should not be given. It is a matter left to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution. There is a marked distinction between the classes of offences dealt with in s. 195, clauses (*b*) and (*c*), and those dealt with in s. 197. A Court granting sanction under s. 195 (*b*) and (*c*) does so in connection with offences committed in or in relation to any proceeding in such Court, and the Court therefore acts in its judicial copacity in granting the sanction on legal evidence. But the Government, in according or withholding sanction, under s 197 (for the prosecution of a public servant in respect of an offence alleged to have been committed by him as such public servant), acts purely in its executive capacity and the sanction need not be based on legal evidence The Criminal Procedure Code does not prescribe any particular form for the sanction

Criminal Procedure Code (*contd.*)—

required by s. 197, as it does in the case of a sanction accorded under s 195.—IN THE MATTER OF KALAGAVA BAPIAH, I. L. R., 27 Mad 54

78. CRIMINAL PROCEDURE CODE—*ss. 195, 439—Sanction to prosecute — Revision — Powers of High Court.*] An application under s. 195 of the Code of Criminal Procedure for sanction to prosecute was made to and granted by a Magistrate of the first class. A further application under s. 195 of the Code to revoke the sanction was made to the Sessions Judge, but was rejected. *Held* that the High Court had power to send for the record of the case under section 435 and to interfere, if necessary, under s. 439 of the Code of Criminal Procedure with these orders. *Kusal* v. *Badri*, Weekly Notes 1907, p. 283, overruled. *Muthuswami Mudali* v. *Veeni Cheti*, I. L. R., 30 Mad.. 382. referred to.—EMPEROR *v.* SERH MAL, I. L. R., 30 All. 243.

79. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s 195—Sanction to prosecute—Order granted by single Judge—Powers of Full Court to revoke the sanction—Full Court not an Appellate Court—Presidency Small Cause Courts Act (XV. of 1882), ss 37, 38.*] Where a sanction to prosecute has been granted by a Judge of the Presidency Small Causes Court at Bombay, the Full Court of that Court has no power to revoke the sanction. *Per* CHANDAVARKAR, J.:—The language used in ss. 37 and 38 of the Presidency Court of Small Causes Act (XV. of 1882) does not appear to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court. *Per* BATCHELOR, J.:—The jurisdiction conferred by s. 38 of the Act is not appellate, but revisional only.—SHIVLAL PADMA, *In re* I. L. R., 34 Bom 316.

80. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 195, 478—Sanction to prosecute—Subsequent order to prosecute passed under s. 478.*] The grant of a sanction to prosecute to a private individual under section 195 of the Criminal Procedure Code, 1898, is no bar to the subsequent institution of proceedings by the Civil Court itself under s. 478 of the Code. *Queen-Empress* v. *Shankar* (13 Bom. 384) followed.—EMPEROR *v.* NAGJI GHELABHAI, I. L. R., 34 Bom. 88.

81 CRIMINAL PROCEDURE CODE—*s. 195, clauses (1) (c) and (3)—Sanction to prosecute—Abetment of offences of forgery and personation committed not in the course of judicial proceedings.*] The offence or offences in which s. 195, clause (1), sub-clause (*c*), read with clause (3) of the Code of Criminal Procedure requires that sanc-

Criminal Procedure Code (*contd.*)—

tion should be given by a court with respect of documents produced in Court must be offences committed by parties to the proceeding, whether the offence be one of the substantive offences described in s. 463 or punishable under ss. 471, 475 or 476 of the Indian Penal Code or only amounts to abetment of any such offences.—EMPEROR *v.* GHANSHAM SINGH, I. L. R., 32 All. 74.

82. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 195—Superior Court has no jurisdiction to order further inquiry by Subordinate Court.*] A superior Criminal Court to which an appeal has been preferred under s. 195 of the Criminal Procedure Code against an order of an inferior Criminal Court granting sanction, has no power to take or call for further evidence. The power to do so given by section 428 is limited to appeals under that chapter.—KRISHNA REDDY *v.* EMPEROR, I. L. R., 33 Mad 90.

83. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 195—Sanction to prosecute—jurisdiction—Subordination of Courts—Transfer of case out of local jurisdiction, power to.*] A petition asking for sanction to prosecute for certain offences under section 195 (*b*) and (*c*), Criminal Procedure Code, Act V. of 1898, should not be transferred to a court to which the court before which the petition for sanction was pending is not subordinate, as the sanction of such a Court would be ineffective. The High Court cannot transfer a case under section 110, Criminal Procedure Code, to any Magistrate other than one within whose local jurisdiction the person is found against whom proceedings are instituted. *In the Matter of the petition of Amar Singh*, I. L. R., 16 All. 9. *Held*, that the same principle applies to section 195, Criminal Procedure Code.—EKAMBARASWARA IYER *v.* VERRABADRA THEVAN, I. L. R., 34 Mad. 186.

84. CRIMINAL PROCEDURE CODE.—*ss. 195 and 439—Sanction to prosecute—Revision—Appeal—Act XLV. of 1860* (*Indian Penal Code*), *section 211.*] *Held* that an application made under clause (6) of s. 195 of the Code of Criminal Procedure may probably be regarded as an application by way of appeal, though it is not material by what name the application is called in pursuance of which the appellate Court revokes (or grants) a sanction granted (or refused) by a Subordinate Court. *Mehdi Hasan* v. *Tota Ram*, I. L. R., 15 All. 61 discussed. *Held* also that to constitute the offence provided for by section 211 of the Indian Penal Code it is sufficient that a false complaint should be made against any person. It is not necessary that summons should be issued upon such complaint.—HARDEO SINGH *v.* HANUMAN DAT NARAIN, I. L. R., 26 All. 244.

Criminal Procedure Code (*contd.*)—

85. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 195(b)—Power of superior Court to revoke sanction after complaint lodged.*] P obtained sanction from a Stationary Sub-Magistrate to prosecute S for offences under ss. 211 and 193, Indian Penal Code, alleged to have been committed before that Magistrate. P did not prefer any complaint in pursuance of the sanction, but the police, relying on it, preferred a charge sheet to the Joint Magistrate against the accused in respect of the alleged offence under s. 211. The Joint Magistrate struck the case off his file, giving as his reason for so doing that he *suo motu* quashed the Sub-Magistrate's sanction under s. 195 (*b*) of the Code of Criminal Procedure:—*Held*, that the Joint Magistrate's action in striking the case off his file was legal and proper, though the reason given by him for so doing was erroneous and his act in quashing the sanction *ultra vires*. A Joint Magistrate, though authorized under s. 407 (2) to entertain appeals preferred by persons convicted on a trial by the Stationary Magistrate is not the Court to which appeals from the Court of the Stationary Magistrate ordinarily lie, within the meaning of s 195 (7). The Court to which the Court of the Stationary Magistrate is, within the meaning of s 195 (6) and (7), subordinate is that of the District Magistrate. *Eroma Variar* v. *Emperor*, (I. L. R., 26 Mad 656), and *Sadhu Lall* v. *Ram Churn Pasi*, (I. L. R., 30 Cal. 394), followed. The Joint Magistrate could not, therefore, revoke the sanction given by the Stationary Sub Magistrate, the District Magistrate alone having the power to revoke or grant a sanction given or refused by the Stationary Sub-Magistrate. Nor was it competent to a District Magistrate, under s. 407, to direct that applications for revoking or granting a sanction given or refused by a Sub-Magistrate may be presented to the Joint Magistrate. Whether the Court authorized to exercise such a power under sub-s. (6) can exercise it *suo motu*, as if it were a Court of revision, where no application has been made to it either to give a sanction which has been refused or to revoke a sanction which has been given.—*Quære.* The course pursued by the police in sending a police report in respect of the offence was contrary to law; but whether, on the strength of the sanction accorded to P, a police officer or other stranger might have preferred a complaint against S.—*Quære.* The mere

Criminal Procedure Code (*contd.*)—

fact that a complaint has been made, in pursuance of sanction, will be no bar to a Court competent under sub s. (6) to deal with an application for revoking such sanction, entertaining such application and disposing of it according to law, even if the complaint in pursuance of the sanction has been preferred to itself.—IN THE MATTER OF SUBBAMMA, I. L. R., 27 Mad. 124.

86. CRIMINAL PROCEDURE CODE—*s. 195 (c)—Sanction to prosecute—Forgery—Offence alleged not in connection with any proceeding before any Court—Sanction unnecessary.*] By s. 195, clause (*c*), of the Code of Criminal Procedure courts are prohibited from taking cognizance of an offence described in s. 463 of the Indian Penal Code, when such offence has been committed by a party to any proceeding in any Court in respect to a document produced or given in evidence in any such proceeding. The section does not remove from the cognizance of Criminal Courts an offence described in s. 463 when such an offence has been committed by an ordinary individual. So long as the prosecution is confined to offences connected with a document committed prior to its production in court, such prosecution is within the law and requires no sanction.—EMPEROR *v.* LALTA PRASAD, I. L. R., 34 All. 654.

87. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 195 (6)—Appeal lies to High Court against an appellate order revoking sanction granted by Court of First Instance.*] The right of appeal conferred by s. 195 (6) of the Code of Criminal Procedure as read with sub-s. (7) of the same section, is not restricted to a right of appeal to the Appellate Court to which the Court of First Instance is immediately subordinate. The revocation by the Appellate Court of a sanction given by the Court of First Instance, is a refusal of sanction within the meaning of sub-s. (6) and an appeal lies therefrom to the High Court, as well as in cases where the sanction refused by the Court of First Instance is granted by the Appellate Court, *Palaniappa Chetti* v. *Annamalai Chetti* (I. L R., 27 Mad. 223), approved. An order revoking a sanction is a refusal of a sanction just as an order confirming a sanction is an order giving a sanction.—MUTHUSWAMI MUDALI *v.* VEENI CHETTI I. L. R., 30 Mad. 382.

88. CRIMINAL PROCEDURE CODE—*s. 115 Criminal Procedure Code, s. 195 (6)—Sanction to prosecute—Sanction granted by Munsif—Revisional powers of District Judge.*] One of the parties to a civil suit applied for sanction to prosecute the plaintiff, on the ground that he had instituted a false claim. The Munsif dismissed the application on technical grounds. The applicant applied to the District Judge under s. 195 (6) of the Code of Criminal Procedure. The Judge remanded the case to the Munsif for trial of the application. *Held*, that the powers of revision exercisable by the District Judge were confined to those conferred by s 195, Criminal Procedure Code, and he had no jurisdiction to make the order of remand —BENI PRASAD *v.* SARJU PRASAD THAKURIA. I. L. R., 33 All. 512.

89 CRIMINAL PROCEDURE CODE (ACT V. OF 1898),—*s. 195—(7), cl. (a) (b) and (c)—Sanction to prosecute—Sanction refused—Further application—"Case"—"Principal Court of original jurisdiction."*] In a suit for arrears of rent exceeding Rs. 100, a decree was passed in favour of the appellant. In course of execution proceedings the respondents made certain statements which, according to the appellant, were false. The appellant applied for sanction to prosecute them under s. 195, cl. (7) of the Code of Criminal Procedure. The sanction was refused by the Assistant Collector. *Held* on application made to the District Judge to grant sanction, that no such application lay. The "case" in connection with which an offence was alleged to have been committed was the proceedings in execution, from which no appeal lay, and the District Judge was not in relation to such proceedings the "principal court of original jurisdiction."—AJUDHIA PRASAD *v.* RAM LAL, I. L. R., 34 All. 197.

90. CRIMINAL PROCEDURE CODE (ACT V. OF 1898) — *s. 195—(7) (c) — Sanction to prosecute—Granted by Collector—Set aside by District Judge—Jurisdiction.*] Where a Collector granted sanction for prosecution for perjury in a case in which no appeal lay, and the District Judge revoked the sanction, *held* that under cl. (*c*) of sub s. 7 of s. 195 of the Code of Criminal Procedure, the District Judge, as being the principal court of original jurisdiction, had jurisdiction to revoke the sanction.—WAZIR MUHAMMAD *v.* HUB LAL, I. L. R., 31 All. 313.

91. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 196, 4 (b), 200, 225, 287, 537—Indian Penal Code—Act XLV of 1860, ss. 109, 114, 124 (a)—Evidence Act I. of 1872, s. 14 (a)—Sanction under s. 196, Criminal Procedure Code, form of—Sanction to prosecute under s. 124 (a) will*

Criminal Procedure Code (*contd.*)—*authorise prosecution under ss. 124 (a) and 114 Indian Penal Code—Complaint by Police officer not a police report under s. 4 (b), Criminal Procedure Code—Defects in complaint cured under s. 537, Criminal Procedure Code—Irregular order to investigate after cognisance under s. 200, Criminal Procedure Code—Defective charge under s. 124 (a), Indian Penal Code, curable under ss. 537 and 225, Criminal Procedure Code—Intention of speaker may be gathered from speeches other than those charged—Admissibility of speeches to prove object of conspiracy—Statement forwarded by accused admissible under s. 287, Criminal Procedure Code—Requisites of offence under s. 124 (a), Indian Penal Code.*] Section 196 of the Criminal Procedure Code only requires that the complaint should be made upon authority from the Local Government and not that the actual complaint must be expressly authorised by the Local Government. The Court has only to see whether the complaint is made by order or under authority of Government. *Queen-Empress* v. *Bal Gangadhar Tilak*, (1898), 22 Bom. 122, referred to. Where a Police officer files a complaint in a non cognisable case or regarding an offence of which it is not his duty to report, such complaint is a complaint within section 4 (*b*) of the Criminal Procedure Code and is not a police report. *King-Emperor* v. *Sada*, (1902), 26 Bom. 150, referred to. A complaint is not defective because it did not set out the speeches or alleged seditious words which form the subject-matter of the subsequent charge. Even if such omission is a defect, it is an irregularity which will be cured by section 537 (*a*) unless it has occasioned a failure of justice. When a magistrate, after duly taking cognisance of a case under section 200, Criminal Procedure Code, makes an order to investigate not authorised by law, such unauthorised order does not vitiate subsequent proceedings. A charge of an offence under section 124 (*a*) is defective if it does not set out the speeches alleged to be seditious; but such defect does not, under sections 537 and 225 of the Code of Criminal Procedure, vitiate the proceedings and any objection on the ground of such defect ought to be taken as early as possible. Where certain speeches form the subject-matter of a charge for sedition and when such speeches form part of a series of speeches or lectures on one topic, delivered within a short period of time, any of such speeches or lectures will be admissible, under section 14 of the Evidence Act, as evidence to prove the intention of the speaker in respect of the speeches which form the subject of the charge. *Queen-Empress* v. *Jogendra Chunder Bose*, (1892), 19 Cal. 35, referred to. *Emperor* v. *Phanendra Nath Mitter*, (1908), 35 Cal. 945, referred to. The offence of abetting under section 109, Indian Penal Code, plus presence of the abettor on the occasion of the crime abetted is, constructively, under section 114, the offence abetted; and a sanction, under section 196 of the Criminal Procedure Code, to prosecute for an offence under section 124 (*a*), will authorise a complaint under section 124 (*a*) and section 114. Where an agreement exists between two parties in pursuance of which speeches are delivered by them, such speeches are admissible to prove the object of the agreement —CHIDAMBARAM PILLAI v. EMPEROR I. L. R., 32 Mad. 3.

92. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 197—Sanction not necessary to prosecute a Village Magistrate for making a false record.*] Sanction under section 197 of the Code of Criminal Procedure is not required to prosecute a Judge for any act, which is not done by him as such Judge. *Municipal Commissioners for the City of Madras* v. *Major Bell*, (I. L. R., 25 Mad. 15 at p. 23), referred to. A Village Magistrate, in trying a case, is not bound to make any record; and in fabricating a false record of an alleged criminal case, which had no existence, he is not acting as a Judge No sanction is required under section 197 of the Code of Criminal Procedure for prosecuting him for such offence. —PALANIANDY PILLAI v. ARUNACHELLUM PILLAI, I. L. R., 32 Mad. 255.

93. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 197, 537—No Sentence of competent Court to be reversed for want of sanction under s. 195.*] The words 'subject to the provisions hereinbefore contained' in section 537 of the Code of Criminal Procedure must not be construed in such a way as to nullify the provisions of clause (*b*) of the same section that no sentence of a Court of competent jurisdiction shall be reversed on appeal 'for want of any sanction required by section 195.' Want of sanction under section 195 is no ground on appeal for setting aside a conviction after trial for any offence mentioned in the section — PERUMALLA NAYUDU *v.* EMPEROR, I. L. R., 31 Mad. 80.

94. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 199, 238—Charge of kidnapping and conviction for enticing married woman—No complaint by husband—Legality.*] The provision in section 199 of the Code of Criminal Procedure, that no Court shall take cognizance of an offence

Criminal Procedure Code (*contd.*)—

under section 498 of the Indian Penal Code except upon a complaint made by the husband of the woman, means a complaint by the husband of an offence under section 498, not any complaint made by the husband. An accused was charged with kidnaping or abducting a woman under section 366, Indian Penal Code, but the Sessions Judge, holding that the prosecution had failed to prove either kidnapping or abduction, convicted the accused, on the evidence, of an offence under section 498. In doing so he purported to act under section 238 of the Code of Criminal Procedure. The complaint before the Court had been made by the husband, but was only general in terms:—*Held*, that the conviction was bad. *Empress* v. *Kallu*, (I. L. R., 5 All. 233), followed and approved.—BANGARU ASARI *v.* EMPEROR I. L. R., 27 Mad., 61.

95. CRIMINAL PROCEDURE CODE—*s. 203—Dismissal of complaint under s. 203 without taking sworn statement of complainant.*] A Presidency Magistrate may dismiss a complaint under s. 203 of the Criminal Procedure Code on a police report without examining the complainant. The verification on oath of a complaint before a Magistrate is a sufficient compliance with the provisions of s 203. The omission to examine will, at the most, amount to an irregularity of the description covered by s. 537, Criminal Procedure Code. — *Re* VELU NATTAN, I L. R., 35 Mad 606.

96. CRIMINAL PROCEDURE CODE—*s. 203—Complaint—Jurisdiction — Dismissal of complaint no bar to the cognisance of a fresh complaint in* pari materiâ] There is nothing to prevent a Magistrate from entertaining a second complaint made against the same person even though the second complaint may be connected with a previous complaint which has already been dismissed under the provisions of s. 203 of the Code of Criminal Procedure. *Queen-Empress* v. *Umedan*, Weekly Notes, 1895, p. 86 followed. *Dwarka Nath Mondul* v. *Beni Madhab Banerji*, I. L. R, 28 Cal. 652, and *Mir Ahwad Hossein* v *Mahomed Askari*, I. L R., 29 Cal. 726, referred to. *Queen-Empress* v. *Adam Khan*, I. L R., 22 All. 105, distinguished.—EMPEROR *v.* MEHRBAN HUSAIN, I. L. R., 29 All 7.

97. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 203, 435, 439—Complaint—Complaint, dismissal of—Revival of Proceedings—Illegality.*] When an original complaint is dismissed under s. 203 of the Code of Criminal Procedure no fresh complaint on the same facts can be entertained so long as the order of dismissal is not set aside by a competent authority. *Mir Ahwad Hussein* v. *Mahomed Askari*, (I. L. R., 29 Cal. 726), differed from.—MAHOMED ABDUL MENNAN *v.* PANDURANGA ROW, I. L. R., 28 Mad 255.

98. CRIMINAL PROCEDURE CODE—*s. 206 et seqq.—Discharge—Practice—Powers and duties of Magistrate inquiring into case triable by the Court of Session discussed.*] Under Chapter XVIII of the Code of Criminal Procedure a Magistrate inquiring into a case triable by the Court of Session has a wide discretion in the matter of weighing the evidence produced on one side or the other, the remedy for an erroneous exercise of such discretion being provided in the powers conferred on Sessions Judges and District Magistrates by s 436 of the Code But in the exercise of such discretion, if the question of discharge, or commitment, is one merely of probabilities, the inquiring Magistrate ought rather to leave the decision thereof to the Court of Session than to make an order of discharge, because in his opinion the accused ought to have the benefit of the doubt. *Chiranji Lal* v. *Ram Lal* Weekly Notes, 1904, p. 5, discussed. *Queen-Empress* v. *Dukes*, Weekly Notes, 1899, p. 135, referred to by KNOX, J.—FATTU *v.* FATTU, I. L. R., 26 All. 564

99. CRIMINAL PROCEDURE CODE—*s. 208—Procedure—Witnesses — Duty of Magistrate inquiring into a case triable by the Court of Session to summon and examine witnesses asked for by the accused.*] The accused, against whom an inquiry with regard to an alleged offence under s. 330 of the Indian Penal Code was being held by a Magistrate of the first class, asked the Magistrate to summon certain witnesses for the defence; but the Magistrate without summoning such witnesses passed an order committing the accused to the Court of Session. *Held* that the Magistrate was bound to take all such evidence as the accused was prepared to produce before him, and that the order of commitment was bad in law. *Queen-Empress* v. *Ahmadi* (I L R., 20 All 264) followed.—EMPEROR *v.* MUHAMMAD HADI, I. L. R., 26 All. 177.

100. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 209—Magistrate—Inquiry—The case not committed to the Court of Session for want of sufficient grounds—Appeal against the order—Order reversed by the Sessions Judge—Commitment when to be made—Discharge of accused.*] When a Committing Magistrate finds that there is no evidence whatever or that the evidence tendered for the prosecution is totally unworthy of credit, it is his duty under s 209

Criminal Procedure Code (*contd.*)—

of the Criminal Procedure Code (Act V. of 1898) to discharge the accused. Where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session. *Emperor* v. *Ravji Hari Velgaumkar* (1907) 9 Bom. L. R. 225 followed; *Queen-Empress* v. *Namdev Satvaji* (1887) 11 Bom. 372, distinguished; and *Lachman* v. *Jwala* (1882) 5 All. 161, approved.—*In Re* BAI PARVATI, I. L. R., 35 Bom. 163.

101. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 215, 436—s. 215 applies only to a commitment actually made and not to order by Sessions Judge directing committal.*] The provisions of s. 215 of the Code of Criminal Procedure apply only to a commitment actually made and not to a case where a Sessions Judge in exercise of the powers, vested in him by s. 436 of the Code, sets aside an order of discharge made by a Magistrate and directs a committal to the Sessions. In such cases the High Court may consider the facts, as well as the questions of law involved, to determine whether the Sessions Judge has exercised a proper discretion. *Pirthi Chand Lal* v. *Sampatia*, (7 C. W. N. 327), referred to.—MUTHIA CHETIY *v.* EMPEROR, I. L. R., 30 Mad. 224.

102. CRIMINAL PROCEDURE CODE—*ss. 222, 233, 234 and 235—Three distinct offences of criminal breach of trust and three distinct offences of falsifying accounts cannot be tried together.*] It is illegal to try a person on a charge which alleges three distinct acts of criminal breach of trust and three distinct acts of falsifying accounts. S. 234 of the Code of Criminal Procedure will not apply, as the offences of criminal breach of trust and falsification of accounts are not of the same kind: neither will s. 235 cover the case, as the several offences cannot be said to form part of the same transaction. *King-Emperor* v. *Nathlal Bapuji*, (4 Bom. L. R. 433), referred to. Although, under s. 222 of the Code of Criminal Procedure, a charge for the gross amount misappropriated within a period of twelve months shall be deemed to be a charge of one offence within s 234, it does not follow that the acts so charged should be considered to be one transaction within the meaning of of s. 235.—KASI VISVINATHAN *v.* EMPEROR, I. L. R., 30 Mad 328.

103. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 225, 233, 234, 235, 236 and 237 — Charges — Joinder of charges—Misjoinder of charges — Indian Penal Code (Act XLV. of 1860), ss. 124A and 153A — Sedition—Promoting enmity, etc., between classes—Publication, what constitutes.*] The accused was charged at one trial with having committed offences punishable under ss. 124A and 153A of the Indian Penal Code, on two charges, one with respect to each of the two articles he published on different dates in his newpaper called the *Hind Swarajya*. At the trial there was no other evidence of the publication of the newspaper in Bombay except the declaration made by the accused under the Press Act, and the depositions of witnesses who received the newspaper in Bombay as Government servants in their capacity as such. The accused was convicted on both the charges and sentenced separately on each of them. It was contended in appeal that there was no evidence of the publication of the newspaper in Bombay, and that there was a misjoinder of charges vitiating the trial. *Held*, that the evidence on record was sufficient to prove the publication of the newspaper in Bombay. *Held*, further, that the trial was not bad as there had been no misjoinder of charges. *Per* CHANDAVAKAR, *J.*:—It is true that the Magistrate framed two charges one with respect to each of the two articles. But in each charge the offences are mentioned as being those punishable under ss. 124A and 153A of the Indian Penal Code, so that the accused had distinct notice of the charges he had to answer, and he could hardly have been prejudiced by the somewhat informal mode in which the charges were drawn up. The defect, if any, was no more than a mere irregularity, cured by the provisions of s. 225 of the Code of Criminal Procedure. There is nothing in the Criminal Procedure Code which directs that where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Indian Penal Code, the section or sections in either case being the same, the joinder of the charges under those sections is illegal. Substantially the acts amount in such a case to offences punishable under the same sections of the Indian Penal Code and therefore they are offences of the same kind. *Per* HEATON, *J.*:—S. 234 of the Criminal Procedure Code does not say that at most, a trial must be limited to three charges: it says it must be limited to three offences and that the offences must be of the same kind. The "offence" as defined by the Code itself is the act or omission made punishable. The offences in this case were two in number, namely, the publication of two articles on two different dates. These two offences were, as charged, punishable under the same section of the Indian Penal Code, and were, therefore, offences of

Criminal Procedure Code (*contd.*)—

the same kind. The word "section" in s. 234 of the Criminal Procedure Code is not invariably to be read as singular. It is not the intention of the Code of Criminal Procedure, either express or implied, to exclude from the operation of s. 234 of the Code, an offence because it is made the subject of more than one charge. Charging one act or series of acts under more than one section of the Indian Penal Code, is a proceeding provided for in s. 235 (clause 2) and in s 236 of the Criminal Procedure Code and is also provided for in s. 71 of the Indian Penal Code. The Court may charge an offence twice over under two different sections but by so doing it cannot increase the sentence which may be imposed. That principle is not offended by trying together separate offences for each of which there is more than one charge —EMPEROR *v.* TRIBHOVANDAS, I L. R., 33 Bom. 77.

104. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 227, 228, 199, 238, 537—Charge—Addition of a charge—Irregularity—Indian Penal Code (Act XLV. of 1860), ss 363, 366, 498.*] The accused was tried on charges under ss. 363 (kidnapping from lawful guardianship) and 366 (kidnapping a woman) of the Indian Penal Code (Act XLV. of 1860). At the conclusion of the evidence to establish these charges and after the evidence for the defence had been recorded, the Court added a charge under section 498 (enticing a married woman) of the Code, notwithstanding the objection by the accused's Counsel. The trial ended in conviction of the accused on all the three charges. The accused appealed contending that the procedure adopted was contrary to the provisions of s. 199 of the Criminal Procedure Code and to the spirit of s. 238 of the Code:—*Held* (1) that the procedure adopted in the case was not regular. The additional charge framed at the stage it was framed, notwithstanding the objection by the accused's Counsel, was prejudicial to the accused; (2) that the conviction under s. 498 of the Indian Penal Code should be set aside: and further investigation be made into the remaining charges —EMPEROR *v.* ISAP MAHOMED, I L. R., 31 Bom. 218.

105. CRIMINAL PROCEDURE CODE—*s. 233—Charge—Charge not distinguishing separate offences alleged against accused—Charge held to be bad in law.*] Certain persons, who were alleged by the prosecution to have committed three, if not four, separate dacoities in the course of the same night, were charged to the effect that they on or about the 12th December at Dabri "committed dacoity and therefore committed an offence punishable under s. 395 of the Indian Penal Code." *Held* that the charge ought to have specified each alleged dacoity separately, and that in the form in which it was drawn it was not merely irregular but bad in law; and a new trial was ordered. *Subrahmania Ayyar v. King-Emperor*, (I. L. R., 25 Mad., 61) referred to —EMPEROR *v.* FATTU, I. L. R., 26 All. 195.

106. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 233, 239—Joint trial of different accused—Receiving stolen property at different times and from different persons—Same transaction—Indian Penal Code (Act XLV. of 1860), s. 411*] A theft was committed of certain property including ornaments. S. was one of the persons who received the stolen property from the thieves. S. disposed of the property to several persons, and being indebted to J he gave a portion of the property to J in satisfaction of his debt. K was found to have in his possession a portion of the property identified as stol n in the same theft, but there was nothing to show when he received it and from whom. Under these circumstances the three persons S, J and K were tried together at one trial on charges of receiving stolen property knowing it to be stolen: *Held* by RUSSELL and BATTY, *JJ.*, that the three offences against the three accused S, J and K were distinct offences which could not be regarded as offences committed in the same transaction within the meaning of section 239 of the Criminal Procedure Code, and that the trial of the three accused together was in contravention of the provisions of section 233 of the Code and was therefore illegal. *Per* BATTY, *J.*:—"The offence punishable under section 414 of the Indian Penal Code is that of voluntarily assisting in disposing of stolen property and therefore must necessarily form part of the same transaction as the receipt by the person to whom it is so disposed of. It necessarily involves manifest criminality in both persons at one and the same time when both offences are committed." "The words of section 239 of the Criminal Procedure, 1898, are, to say the least of it, ambiguous, if intended to include in the same transaction a series of acts one or more of which had been done at a time before the parties to the subsequent acts had anything to do with that transaction. The illustrations to the section seem to suggest that the persons to be jointly tried must have been associated from the first in the series of acts which form the same transaction." "The inevitable result appears to be that the proceedings of the Magistrate were illegal and a nullity . . . There has

Criminal Procedure Code (*contd.*)—

been no legal trial. There has therefore been no legal acquittal and there is therefore neither appeal against acquittal nor acquittal to reverse, and the question whether the accused should now be legally tried is a question not for judicial decision but for the consideration of the authorities with whom it rests to proceed with a prosecution." *Sabrahmania Ayyar* v. *King-Emperor* (1901) 25 Mad 61, followed.—EMPEROR *v.* JETHALAL, I. L. R., 29 Bom. 449.

107. CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*ss. 233—236, 239—Misjoinder of charges—Illegality—Act XLV. of 1860 (Indian Penal Code), ss. 408 and 467.*] The accused was charged and tried at one and the same trial for three offences under section 408 of the Indian Penal Code committed within a period of one year, and three offences of forgery under section 467 of the Code and was convicted and sentenced in respect of all the six offences. *Held* that this was an illegality not covered by section 537 of the Code of Criminal Procedure. *Subrahmania Ayyar* v. *King-Emperor*, I. L. R., 25 Mad., 61, followed. *In re Bal Gangadhar Tilak*, I. L. R., 33 Bom, 221, referred to and discussed.—EMPEROR *v.* SHEO SARAN LAL, I. L. R., 32 All. 219.

108. CRIMINAL PROCEDURE CODE (ACT V. OF 1908)—*ss 233. 234, 235. 236, 237 and 239—Charges, Joinder of charges—Privy Council, leave to appeal to, in criminal case—Practice and Procedure.*] The accused was charged with an offence punishable under s. 124A of the Indian Penal Code (Act XLV. of 1860) in respect of an article which he published in his newspaper and also with offences punishable under ss. 124A and 153A of the Code with regard to another article which he published in the same newspaper. For all these offences he was tried at one trial, and was convicted and sentenced for each of them. *Held*, that there was no irregularity in the trial on the ground of misjoinder of charges. Ss 234, 235, 236 and 239 of the Criminal Procedure Code, 1898, mentioned as exceptions in s. 233 of the Code, are not mutually exclusive. If it had been intended that s. 235 (2) or s. 236 could not be made use of in co-operation with s. 234 this intention could have been easily expressed. If the exceptions are mutually exclusive, the provisions of s. 236 or 237 could never be invoked to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under s. 234. The Legislature could hardly have intended that a joint trial of three offences under

Criminal Procedure Code (*contd.*)—

section 234 of the Criminal Procedure Code, 1898, should prevent the prosecution from establishing at the same trial the minor or alternative degrees of criminality involved in the acts complained of. Sections 235 (2) and 236 of the Criminal Procedure Code, 1898, may be resorted to in framing additional charges where the trial is of three offences of the same kind committed within the year. Before granting a certificate for leave to appeal to the Privy Council, the Court must be satisfied that there is reasonable ground for thinking that grave and substantial injustice may have been done by reason of some departure from the principles of natural justice. *Ex-parte Carew* [1897] A. C. 719, and *Dinizulu* v. *Attorney General of Zululand* (1889) 61 L. T. 740, followed. *In re* BAL GANGADHAR TILAK, I L. R, 33 Bom. 221.

109. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 234 and 235—Charge—Misjoinder of charges—Illegality.*] An accused person was charged with and tried for, first, three separate acts of criminal misappropriation committed within a year, and secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation. *Held* that this was an illegality not covered by the provisions of section 537 of the Code of Criminal Procedure.—EMPEROR *v.* MATA PRASAD, I. L R., 30 All, 351.

110. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 234—Act XLV. of 1860, s. 409—Criminal breach of trust—Form of charge.*] In a charge of criminal misappropriation there were three counts. Each count specified the sum of money alleged to have been misappropriated by the accused on a particular day; but in two out of the three cases the total sum consisted of three separate items in each instance. *Held* that a charge so framed did not offend against s 234 of the Code of Criminal Procedure. *King Emperor* v. *Gulzari Lal*, I. L. R., 24 All. p 254. followed.—EMPEROR *v.* ISHTIAQ AHMAD, I. L. R, 27 All. 69.

111. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s 235—"Same transaction" what is—Community of purpose or design and continuity of action necessary.*] In order that a number of acts may be so connected together as to form part of the same transaction within the meaning of s. 235, Criminal Procedure Code, community of purpose or design and continuity of action are essential elements. To constitute community of purpose, the mere existence of some general purpose or design will not be sufficient. The purpose in view must be

Criminal Procedure Code (*contd.*)—

something particular and definite. There is no continuity of action where each act is a completed act in itself and the original design accomplished so far as that act is concerned. Where a company is formed with the object of defrauding the public, it cannot be said that distinct acts of embezzlement committed in the course of several years form part of the same transaction by reason of such general object.—CHORAGUDI VENKATADRI *v.* EMPEROR, I. L. R., 33 Mad. 502.

112. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 237, 238, 423—Person convicted of an offence cannot on appeal be convicted of abetment of such offence.*] The power of an Appellate Court under s 423 of the Code of Criminal Procedure to alter a finding must be used in accordance with the provisions of ss. 237 and 238 of the Code. Where a person who has been convicted of an offence has appealed, the Appellate Court cannot, after acquitting him of such offence, convict him of the abetment of such offence.—PADMANABHA PANJIKANNAYA *v.* EMPEROR, I. L. R., 33 Mad. 264.

113. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 247 and 403—Autrefois Acquit—Acquittal under s. 243 bars further proceedings.*] Where a case was disposed of under s. 247, Criminal Procedure Code, the complainant and accused both being absent, the order under s. 247 operates as a bar to further proceedings. The provision in s 403, Criminal Procedure Code, that a fresh trial will not be barred unless the accused has in the first case been "tried" does not limit the effect of an order of acquittal under s. 247, Criminal Procedure Code.—IN THE MATTER OF GUGGILAPU PADDAYA OF PALAKOT, I. L. R., 34 Mad. 253.

114. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 250—Order for compensation.*] The question whether the discretion given by s. 250 of the Code of Criminal Procedure has been rightly exercised, must always depend upon the facts of the particular case. If the false charge is of such a nature that a prosecution is necessary on grounds of public policy, it may well be that a magistrate would exercise his discretion wrongly if, instead of sanctioning a prosecution, he awarded compensation. If the false charge is one which does not render it necessary on grounds of public policy that a prosecution should be sanctioned, a magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly.—IN THE MATTER OF TAMMI REDDI.—I. L. R., 27 Mad. 59.

Criminal Procedure Code (*contd.*)—

115 CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 250—Frivolous complaint—Jurisdiction—Complaint dismissed without issue of process.*] *Held* that s. 250 of the Code of Criminal Procedure is not applicable to a case in which a complaint is dismissed without any process being issued for the attendance of the person against whom such complaint is made —BHAGWAN SINGH *v.* HARMUKH, I. L. R., 29 All. 137.

116. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 250—In appeals under s. 250 notice to accused not imperative.*] In appeals under s 250 of the Criminal Procedure Code, it is not imperative that notice should be given to the accused.—AMBAKKAGARI NAGI REDDI *v.* BASAPPA OF MEDIMAKULAPALLI, I. L. R., 33 Mad. 89.

117. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s 250—Frivolous or vexatious complaint—Award of compensation to accused—Award to be made by order of discharge or acquittal and not by separate order.*] *Held* that s. 250 of the Code of Criminal Procedure was not intended to meet the case of false accusations, but of frivolous and vexatious accusations. *Held also* that the direction to pay compensation in a case found to be frivolous or vexatious cannot be made in a subsequent proceeding, but must form part of the order of discharge or acquittal.—RAM SINGH *v.* MATHURA, I. L. R., 34 All. 354.

118. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 250—Frivolous or vexatious complaint — False complaint—Act X. of 1882 (Criminal Procedure Code), s. 560.*] *Held* that s 250 of the Code of Criminal Procedure is equally applicable to a case which is deliberately false as to one which cannot be said to be more than frivolous or vexatious. *Manjhli* v. *Manik Chand*, Weekly Notes, 1896, p 180, *quoad hoc* overruled. *Adikkan* v *Alagan*, I. L. R., 21 Mad. 237, and *Beni Madhub Kurmi* v. *Kumud Kumar Biswas*, (I. L. R., 30 Cal. 123), followed.—EMPEROR *v.* BINDESRI PRASAD, I. L. R., 26 All 512.

119. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 250—Complaint—Compensation for frivolous or vexatious complaint—Order for compensation dependent on existence of a "complaint."*] Ram Padarath, a Civil Court chaprasi, made a report that in endeavouring to execute a warrant for the arrest of a certain judgment-debtor, he had met with resistance from the judgment-debtor, who has escaped. This report was laid before the District Judge, who directed that the papers should be laid before the District Magistrate with a view to the institution of a case under s. 225 (*B*) of the

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Indian Penal Code. Such proceedings were accordingly instituted; and the case came before the Joint Magistrate, who acquitted the accused and ordered that Ram Padarath should pay Rs 50 as compensation to the judgment-debtor. *Held* that, there being no complaint in the case within the meaning of s. 4 of the Code of Criminal Procedure, the order awarding compensation was illegal. *Bharat Chunder Nath* v. *Jabed Ali Biswas*, (I. L. R., 20 Cal. 481,) followed.—RAM PADARATH. IN THE MATTER OF THE PETITION OF—, I. L. R., 26 All. 183

119A. *See* also COMPENSATION.

120. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 253—Order of discharge not a 'judgment'—Competency of Magistrate after discharge to take fresh proceedings*] It is competent to a Magistrate who has discharged an accused under s. 253 of the Code of Criminal Procedure to take fresh proceedings and issue process against the person discharged in respect of the same offence without such order being set aside by a higher Court. *Per* PINHEY, J.—An order of discharge is not a 'judgment.' A 'judgment' is an order in a trial terminating in either the conviction or acquittal of the accused. The principle of *autrefois acquit* can have no application where an accused is discharged under s. 253, as there can be no trial when the accused is discharged. — EMPEROR *v.* MAHESWARA KONDAYA, I. L. R., 31 Mad. 543

121. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 257, 537 — Refusal of Magistrate to issue process to witnesses where none of the grounds mentioned in s. 257 exist is illegal.*] The refusal of a Magistrate to issue process to witnesses named by the accused, when such refusal, in regard to any particular witness, is not based on any of the grounds mentioned in s 257 of the Code of Criminal Procedure, is an illegality which cannot be cured by s 537 of the Code A conviction under such circumstances is illegal and will be set aside. *Emperor* v. *Purushottam*, (I. L. R., 26 Bom. 418), followed.—NARAYANA MUDALY *v.* EMPEROR, I. L. R., 31 Mad. 131.

122. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s 259—Complainant - Absence of complainant at hearing — Discharge of accused — Revival of proceedings on fresh complaint — Jurisdiction.*] Where an order of discharge under s. 259 of the Code of Criminal Procedure has been passed by a Magistrate, such order will not preclude him from proceeding with the case on a fresh complaint. An order of discharge under s. 259 of the Code of Criminal Procedure is not an acquittal nor has it the effect of an acquittal under s. 403.—CHINNATHAMBI MUDALI *v.* SALLA GURUSAMY CHETTY, I. L. R., 26 Mad. 310.

123. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 263—Hearing and recording of evidence — Complainant and his witnesses, examination of—Procedure—Practice.*] S. 263 of the Criminal Procedure Code does not excuse the Magistrate from hearing the evidence of all witnesses. In all criminal cases the complainant and such witnesses as he may produce must be examined, whether their evidence is required to be recorded or not, and the case must be decided upon the effect of their evidence.—JABBAR SHAIK *v.* TAMIZ SHAIK, I. L. R., 39 Cal. 931.

124. CRIMINAL PROCEDURE CODE (ACT V. OF 1898) — *s 269—Trial by Jury—Trial with the aid of assessors—Difference in the modes of trial—Accused if prejudiced can complain—Practice—Procedure.*] The accused were tried with a jury on charges of murder (ss. 302, 109, Indian Penal Code), and with the aid of jurors as assessors on charges of rioting, grievous hurt and hurt (ss. 147, 148, 326 and 323 of the Code) respectively. The Judge charged the jury and asked for their verdict on both the charges in the manner prescribed for jury trials. He agreed with the verdict and sentenced the accused to various terms of imprisonment. The accused appealed on the grounds that the learned Judge erred in omitting to take the opinion of the jurors as assessors on the second charge and to write a judgment. *Held*, that the law makes no distinction as to the procedure at the trial between a trial by a jury and one with the aid of assessors except as to the summing up in the case of the former and the manner in which the verdict in the former and the opinions of the assessors in the latter are respectively taken. It is at this latter point that there is a departure of ways, and if the accused who is tried does not intervene at that crucial point, and get the procedure applicable to trials with the aid of assessors enforced, he cannot be heard to complain.—EMPEROR *v.* MAVSING, I. L. R., 33 Bom. 423.

125. CRIMINAL PROCEDURE CODE (ACT V. of 1898)—*ss. 274, 451 (6)—Trial held by a jury consisting of a larger number than that prescribed by law—Illegality.*] Where the Local Government had by notification under s 274 of the Code of Criminal Procedure directed that in trials by jury before a Court of Session the jury should consist of five, it was *held* that a trial be-

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fore a District Magistrate under s. 451 of the Code with a jury consisting of seven persons was held before a tribunal not properly constituted and must be set aside.—EMPEROR *v.* GEORGE BOOTH, I. L. R., 26 All. 211.

126. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 297, 537—Misdirection to jury—Judge bound to state all the elements of offence and deal with evidence, differentiating evidence against each of the accused—Failure to do so not a mere irregularity.*] Under s. 297 of the Code of Criminal Procedure, the Judge must explain to the jury all the essential elements of the offence with which the prisoner is charged. An omission to do so is not a mere irregularity within the meaning of s. 537. It is a failure to comply with an express provision of the law and will vitiate the conviction. The Judge should also point out to the jury the evidence against each of the accused and the circumstances which distinguish the cases of some of the accused from that of the others. *Mangan Das* v. *Emperor*, (I. L. R., 29 Cal. 379), referred to and followed.—MARI VALAYAN *v.* EMPEROR, I. L. R., 30 Mad. 44.

127. CRIMINAL PROCRDURE CODE (ACT V. OF 1898)—*ss. 307, 310—Accused cannot be asked to plead to prior convictions when case referred to High Court under s. 307, before the High Court convicts on such reference.*] Ss. 307 and 310 of the Code of Criminal Procedure clearly provide that an accused is not to be asked to plead to prior convictions until he has been convicted on the charge under trial. Where a Court of Session makes a reference to the High Court under s. 307 of the Code of Criminal Procedure, there is no conviction or acquittal in the Sessions Court and it is only after conviction by the High Court that the accused can be asked to plead to prior convictions.—EMPEROR *v.* KANDASAMI GOUNDAN, I. L. R., 30 Mad. 134.

128. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 307—Jury not to be questioned as to reasons for verdict.*] When the jury return a verdict on the general issue of guilty or not guilty and there is no ambiguity as to the precise offence of which the accused are convicted or acquitted, the Sessions Judge has no power, under s 307 of the Code of Criminal Procedure, to question the jury as to the reasons for their verdict.—EMPEROR *v.* SIRANADU, I. L. R., 30 Mad. 469.

129. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 337, 339—No true and full disclosure where witness subsequently recants his previous statement—On trial after withdrawal of pardon if pardon pleaded in bar, jury to determine whether pardon forfeited.*] A person who has accepted a tender of pardon under s 337 of the Criminal Procedure Code and made a true and full disclosure before the inquiring Magistrate, may be recalled and examined by such Magistrate; and his pardon will be forfeited if he resides from such former statement. It is not necessary in order to forfeit the pardon that he should be examined as a witness in the Court of Sessions. He is examined in the case when he is examined by the Magistrate and the prosecution is not bound to examine before the Sessions an untrustworthy witness. When such person is tried after withdrawal of pardon for the original offence and pleads the pardon as a bar, the jury must determine whether the pardon was forfeited or not. In default of such determination, a conviction will be bad. *Kullan* v *Emperor* (I. L. R., 32 Mad., 173), referred to. *Emperor* v. *Kothea* (I. L. R., 30 Bom. 611), referred to.—ALAGIRISAMI NAICKER *v.* EMPEROR, I. L. R., 33 Mad. 514.

130. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 337 (2), 339—Accused to whom pardon tendered ought to be examined as a witness and not be put into the dock at once.*] An accused person to whom pardon has been tendered and who has accepted such pardon, ought not, when he shows an intention not to give the evidence which he has led the prosecution to expect, to be put back into the dock without being examined as a witness. He should, under such circumstances, be examined as a witness as directed by s. 337 (2) of the Criminal Procedure Code, and then dealt with under s. 339 of the Code. Such a person should, if tried, be tried separately and after the trial of the other accused is over. *Queen-Empress* v *Ramasami*, (I. L. R., 24 Mad. 321), followed.—ARUNACHELLAM *v.* EMPEROR, I. L. R., 31 Mad. 272.

131. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 339—Full and true disclosure by approver—No condition precedent to pardon—Procedure on trial of approver.*] Under s. 339 of the Code of Criminal Procedure of 1898, the making of a full and true disclosure by the approver, is not a condition precedent to the pardon but making an incomplete and false disclosure is a condition, subsequent by which the pardon, which has become operative before such disclosure, is forfeited. There is no necessity for withdrawing the pardon and such withdrawal has no effect. *Queen-Empress* v. *Ramasami*,

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(I. L R , 24 Mad. 321), considered. *Queen-Empress* v. *Sudra* (I. L. R., 14 All. 336), followed. *Queen-Empress* v. *Natu* (I. L. R., 27 Cal. 137), followed. Where a pardon is tendered and the approver is afterwards put on his trial, he ought to be asked if he relies on the pardon as a bar to his trial; and if he does so rely, the prosecution should first prove that the pardon has been forfeited by an incomplete or false disclosure. When this course is not adopted, the conviction is illegal and will be set aside. *King-Emperor* v. *Bala* (I. L. R, 25 Bom. 675), followed. *King-Emperor* v. *Kothia* (I. L R , 30 Bom. 611), followed. The transaction is one of the utmost good faith and the approver commits a breach of the condition if he fails to make a full and true disclosure throughout. The condition is broken if he withdraws before the Sessions Court or on cross-examination statements made before the Committing Magistrate or in his examination-in-chief respectively.—KULLAN v. EMPEROR, I. L. R., 32 Mad. 173.

132. CRIMINAL PROCEDURE Code (ACT V. OF 1898),—*s. 339—Pardon—Pardon granted after accused has had an apportunity of cross examining the witnesses for the prosecution—Withdrawal of pardon and subsequent commitment.*] Where a pardon was tendered by a Magistrate to an accused person after he had had an opportunity as an accused person of cross-examining the witnesses for the prosecution, and on its appearing that he had not made a full and true disclosure of the facts of the case, such pardon was withdrawn and he was committed along with his co-accused to the Court of Session. *Held* that the commitment was not open to objection. *Queen-Empress* v. *Brij Narain Man* (I. L. R, 20 All. 529) followed.—EMPEROR *v.* BUDHAN, I. L. R., 29 All. 24.

133. CRIMINAL PROCEDURE CODE (ACT V. OF 1898), *s. 339, cl. 3—How sanction of High Court under section obtainable.*] The sanction of the High Court under s. 339 (3) of the Code of Criminal Procedure can be obtained only by motion on behalf of the Crown. *Queen-Empress* v. *Manik Chandra Sarkar* (24 Cal. 492), followed.—EMPEROR *v.* MADIGA NALLAVADU, I. L. R., 32 Mad. 47.

134 CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 342—Examination of accused—Filling gap in prosecution evidence by questioning accused—Charge of defamation—Failure to prove making and publication—Irregularity.*] Eight persons were charged with defamation by making and publishing a certain petition regarding

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the conduct of the complainant. Though other evidence was adduced by the prosecution, it was not proved that the accused made and published the matter which was alleged to be defamatory. The Magistrate, however, asked the accused if they had signed the petition, and accepted their answers as proving that they had and as relieving the prosecution from proving the making and publication of the alleged defamatory matter by the accused. He convicted the accused:—*Held*, that the convictions must be set aside. A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under s. 342 of the Code of Criminal Procedure. The omission to prove the making and publication of defamatory matter is more than an irregularity; it is a defect which vitiates the conviction—MOHIDEEN ABDUL KADIR *v.* EMPEROR, I. L. R, 27 Mad. 238.

135. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 345 (2) and 439—Revision—Power of High Court in revision to give leave to compound.*] *Held* that the High Court can in the exercise of its powers of revision under s. 439 of the Code of Criminal Procedure give leave for the composition of an offence under s 325 of the Indian Penal Code.—EMPEROR *v.* RAM PIYARI, I L. R , 32 All. 153.

136. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 349—Case submitted to District or Sub-divisional Magistrate with regard to sentence—Such Magistrate not competent to return case to Magistrate who submitted it.*] Where a Magistate of the second or third class has submitted a case to the District or Sub-divisional Magistrate under s. 349 of the Code of Criminal Procedure, it is not competent to the District or Sub-divisional Magistrate to return the case to the submitting Magistrate if in his opinion the reference was unnecessary. *Imperatrix* v. *Abdulla*. I. L. R., 4 Bom. 240. *Queen-Empress* v. *Viranna*, I. L. R., 9 Mad. 377. *Dula Faqueer* v. *Bhagirat Sircar*, 6 C. L. R. 276, and *Queen-Empress* v. *Havia Tellapa*, (I. L. R., 10 Bom. 196) followed.—EMPEROR *v.* THAKUR DAYAL, I. L R., 26 All. 344.

137. CRIMINAL PROCEDURE CODE (ACT. V. OF 1898.)—*s. 350—Application of section to cases withdrawn from one Magistrate and transferred to another—'Trial' what is within s 350 (a).*] The words of s. 350 of the Code of Code of Criminal Procedure are applicable to cases in which the case under enquiry on trial is withdrawn from one Magistrate, who thereupon ceases to exercise jurisdiction *therein* and is trans-

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ferred to another. A preliminary enquiry by a Magistrate into a case exclusively triable by the Court of Session is not a 'trial' before framing a charge within s. 350 (*a*) and, where such an enquiry is transferred, the Magistrate is not bound to rehear the case *de novo*. *Mohesh Chandra Saha* v. *Emperor*, I. L. R., 35 Cal. 457, followed.—PALANIANDY GOUNDAN *v.* EMPEROR, I. L. R., 32 Mad. 218.

138. CRIMINAL PROCEDURE CODE, (Act V. OF 1898)—*ss. 366, 367—Mode of delivering judgment and its contents—Judgment written and delivered after conviction of prisoners — Defect vitiating conviction.*] Where a judgment in a criminal trial was written and delivered some days after the prisoners were convicted and sentenced :—*Held*, that this was a violation of ss. 366 and 367 of the Code of Criminal Procedure and was more than an irregularity. It was a defect which vitiated the convictions and sentences. *Queen-Empress* v *Hargobind Singh* (I. L. R., 14 All. 242) approved.—BANDANU ATCHAYYA *v.* EMPEROR, I. L. R., 27 Mad. 237.

139. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 394, 395—Magistrate cannot award imprisonment in lieu of whipping when on certificate of the Medical officer before infliction of whipping the sentence of whipping is reduced*.] The power of a Magistrate under s. 395 of the Code of Criminal Procedure to award imprisonment in lieu of whipping is confined to cases in which under s. 394 a sentence of whipping is wholly or partially prevented from being executed. Such power only exists when, under s. 394 (1), a Medical officer present certifies that the offender is not in a fit state of health to undergo such punishment or when under s. 394 (2) during the execution of the sentence a Medical officer certifies that the offender is not in a fit state of health to undergo the remainder of the sentence. There is no provision of law which authorises a Medical officer to certify, *before the infliction* of whipping, that the prisoner is fit to undergo only a smaller number of stripes than that actually ordered. Where in consequence of such a certificate a smaller number of stripes is inflicted, the Magistrate has no power to award imprisonment in lieu of the whipping not inflicted.—THE PUBLIC PROSECUTOR, I. L. R., 31 Mad. 84.

140. CRIMINAL PROCEDURE CODE (ACT V. OF 1898.—*s. 403 (1) No complaint—Order of Acquittal—Whether bar to new trial.*] A soldier from Burma sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for enticing away his wife. When the case came on for hearing, it appeared that the brother had no such authority and the Magistrate acquitted the accused. The complainant then filed a complaint personally. *Held* that the previous acquittal was no bar to the trial of the present complaint inasmuch as the finding of the Magistrate amounted to this that there was no complaint before him. *Queen-Empress* v. *Balwant* (I. L. R., 9 All. 134) referred to.—EMPEROR *v.* UMER-UD-DIN, I. L. R., 31 All. 317.

141. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 407, 428—District Magistrate may withdraw part-heard appeals—Such Magistrate not bound to examine witnesses summoned.*] S. 407 of the Criminal Procedure Code places no restriction on the power of the District Magistrate to withdraw appeals from Subordinate Magistrate, and it is competent to him to withdraw part-heard appeals. There is nothing in s. 428 of the Code which renders it obligatory on the District Magistrate so withdrawing an appeal to examine witnesses summoned by the Subordinate Magistrate from whom the appeal is withdrawn.—ALAGU AMBALAM *v.* EMPEROR, I. L. R., 31 Mad. 277.

142. CRIMINAL PROCEDURE CODE (ACT V. OF 1898).—*s. 407—Sanction to prosecute—Application to Magistrate of the first class—Appeal to District Magistrate—Transfer—Jurisdiction.*]—Section 407 of the Criminal Procedure Code does not entitle a District Magistrate to send appeals under section 195 of that Code to a Magistrate of the first class subordinate to him That section deals with appeals from convictions. *Sadhu Lall* v. *Ram Churn Pasi*, (I. L. R., 30 Cal. 394) followed —EMPEROR *v.* LAL SINGH, I. L. R., 34 All. 244.

143. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 408, 415—Appeal—Sentence.*] Where certain persons were tried by a Magistrate of the first class, convicted of an offence under section 325, Indian Penal Code, and sentenced to a day's imprisonment and a fine of fifty rupees. *Held* that the circumstance that the accused were in fact neither sent to jail nor actually imprisoned would not prevent their being entitled to appeal to the Sessions Judge.—EMPEROR *v.* ALAM, I. L. R., 33 All. 510.

144. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 408, 435—Jurisdiction—Appeal from First Class Magistrate lies to the Sessions Court, within whose Jurisdiction the Court of the Magistrate ordinarily sits—'Situate' meaning of.*] The Court of Session to which appeals lie from Magis-

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tra'es of the First Class under section 408 of the Code of Criminal Procedure in the Court of Session within the local limits of whose jurisdiction the Court of such Magistrate ordinarily sits, whether the offence be committed within such local limits or not. The word 'situate' in section 435 of the Code of Criminal Procedure refers to the place where the inferior Courts mentioned therein ordinarily sit. The principle laid down in section 435 in regard to revisional powers, must, in the absence of any indication to the contrary in the Code, be followed in the case of appeals under section 408.—VALIA AMBU PODUVAL *v.* EMPEROR, I. L. R, 30 Mad. 136.

145. CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*s. 423—Appeal—Power of Appellate court to alter finding of acquittal into one of conviction.*] An appellate court can, under section 423 of the Criminal Procedure Code in an appeal from a conviction, alter the finding of the lower court, and find the appellant guilty of an offence of which the lower court has declined to convict him. *Queen-Empress v. Jabanulla*, (I. L. R., 23 Cal. 975), followed.—EMPEROR *v.* SARDAR, I. L. R., 34 All 115.

146. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 423—Sentence, enhancement of—No enhancement when aggregate period of imprisonment reduced, although fine imposed in addition.*] Where the aggregate period of imprisonment awarded on appeal is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court is no enhancement of the sentence within the meaning of section 423 of the Code of Criminal Procedure. Where the Appellate Court reduced a sentence of one month's imprisonment to five days but imposed in addition a fine with two weeks' imprisonment in default:—*Held*, that the sentence of the Appellate Court was not illegal.—BHAKTHAVATSALU NAIDU *v.* EMPEROR, I. L R., 30 Mad. 103.

147. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 423 (b) (2)—Alteration of finding under—Penal Code, Act XLV. of 1860, s 325—Conviction under, may be altered to Conviction under s. 144—Appellate Court, power of.*] Under section 423 (*b*) (2), Criminal Procedure Code, the Appellate Court may alter the finding maintaining the sentence and there is nothing to restrict the finding which may be altered to a finding of conviction. A conviction under section 325, Indian Penal Code, may be altered by the Appellate Court into a conviction under section 147, Indian Penal Code, the sentence

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under section 325 being maintained. *Abhi Misser* v. *Lakhmi Narain* (I. L. R, 27 Cal. 566), distinguished.—APPANNA *v.* PITHANI MAHALAKSHMI I. L. R., 34 Mad. 545.

148. CRIMINAL PROCEDURE CODE (ACT V. OF 1898),—*ss. 423 (1), 528—Appellate Court can itself try the offender—Cognizance in such cases under s. 190 (b) and not 190 (c).—Section 423 (1) (b) of the Code of Criminal Procedure ought to be read with s. 528 of the Code*] The provisions of section 423 (1) (*b*) do not preclude an Appellate Court, when it reverses the finding and sentence under appeal, from trying the offender itself, if the offence is one ordinarily triable by it. In such cases, the Appellate Court takes cognizance under section 190 (*b*) and not section 190 (*c*).—EMPEROR *v.* MANIKKA GRAMANI, I. L. R., 30 Mad. 228.

149. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 435, 437, 439—District Magistrate cannot under s. 437 set aside an order of discharge on the ground that the lower Court had not appreciated the evidence properly.*] Where a District Magistrate taking action under section 437 of the Code of Criminal Procedure comes to the conclusion that the evidence for the prosecution is reliable, and that the lower Court has erred in disbelieving such evidence and discharging the accused, the proper course for him is to refer the matter for orders to the High Court, which can deal with it under section 439. It is not open to him to set aside the order of discharge himself on the ground that the lower Court had misappreciated the evidence. *Queen-Empress* v. *Amir Khan*, (I. L. R., 8 Mad. 337), followed. *Haridass Sanyal* v. *Saritulla*, (I. L. R., 15 Cal. 621), followed. When a Court competent to decide whether the accused is guilty or not holds that he is not guilty on a consideration of the evidence adduced by the prosecution, that finding should, if at all, be set aside only by a Court competent to set aside such finding of fact, that is by the High Court under section 439 of the Code of Criminal Procedure read with section 423.—LAKSHMINARASAPPA *v.* MEKALA VENKATAPPA I. L. R., 31 Mad. 133.

150. CRIMINAL PROCEDURE CODE (ACT V. 1898,—*ss 145, 435 and 537—Revision—Procedure—Irregularity not prejudicial to either party.*] In the course of proceedings commenced under section 107 of the Code of Criminal Procedure it was found by the Magistrate that there was a dispute relating to land and likely to cause a breach of the peace between the two parties before him. After giving both an opportunity of being heard, the Magistrate passed an order

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under section 145 of the Code maintaining one party in possession. *Held* that, notwithstanding that the procedure of the Magistrate was in some respects defective, there was no cause for the exercise of the revisional jurisdiction of the High Court, inasmuch as the parties had been given an opportunity of representing their respective cases, and there was nothing to show that the irregularities in procedure which had occurred had caused any prejudice to either.—*In the Matter of the petition of T. A. Martin*, I. L. R., 27 All. 296, referred to.—DEBI PRASAD *v.* SHEODAT RAI, I. L. R., 30 All. 41.

151. CRIMINAL PROCEDURE CODE, (ACT V. OF 1898)—*s. 435—Power of Sessions Judge to make reference.*] It is only the Collector who can take action and impose a fine under Bengal Regulation VI. of 1885. A Joint Magistrate has no jurisdiction under s. 2 of the Regulation, even though the case may have been made over to him by the District Magistrate.—EMPEROR *v.* MUHAMMAD ALAM, I. L. R., 33 All. 84

152. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 435, 437, 438, 439—District Mogistrate has power under s. 437 to order further inquiry when accused discharged on misappreciation of evidence—Further inquiry may be by another Magistrate.*] On the question of the extent of the powers of interference of the High Court and a District Magistrate or Sessions Judge, under s. 437 of the Code of Criminal Procedure, when an accused is improperly discharged on a misappreciation of evidence by a Subordinate Magistrate:—*Held*, by WALLIS and MUNRO, JJ (SANKARAN NAIR, J., dissenting), (1) That the powers of interference of the High Court and the District Magistrate or Sessions Judge are coextensive under s. 437 of the Code of Criminal Procedure, and they can set aside an order of discharge for reasons other than those which will justify the High Court in interfering on revision. (2) That the Sessions Judge or District Magistrate cannot, in the exercise of the power to order further inquiry, under s 437, himself frame the charge or order the Subordinate Magistrate to frame the charge and try the accused. The District Magistrate may, under the other part of the section, make the further inquiry himself and frame a charge in the course of such inquiry. (3) The Sessions Judge or District Magistrate is not bound to refer the case to the High Court in a case of difference of opinion, owing to mere misappreciation of evidence but would be justified in ordering a reconsideration of the same evidence. (4) Where the Subordinate Magistrate had dealt with the case in an unsatisfactory way, further inquiry by another Magistrate may be ordered; and such Magistrate may, if necessary, retake the evidence taken before the first Magistrate. *Hari Dass Sanyall* v. *Saritullu*, (I. L. R., 15 Cal. 608) dissented from. *Per* SANKARAN NAIR, J.—Where the Sessions Judge or District Magistrate differs from the conclusion of the Subordinate Magistrate on the evidence, the only question is whether there should be a retrial and no useful purpose is served by a further inquiry. The Sessions Judge or District Magistrate must, in such cases, refer the matter to the High Court under s. 438 and cannot order further inquiry under s. 437. The powers conferred on District Magistrates and Sessions Judges by s. 437 are not wider than the powers conferred on High Courts by s. 439.—NARAYANASWAMY NAIDU *v.* EMPEROR, I. L. R., 32 Mad. 220.

153. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 435—Revision—Executive Order—Order of District Magistrate dismissing a head-man.*] *Held* that an order passed by a District Magistrate under the rules framed by Government under s. 45 (3) of the Code of Criminal Procedure is an executive order and not subject to the revisional powers of the High Court.—IN THE MATTER OF THE PETITION OF DAMMA, I. L. R., 29 All. 563.

154. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 435 and 437—Sessions Judge can order further inquiry on the ground of misappreciation of evidence.*] Under sections 435 and 437 of the Code of Criminal Procedure, the Sessions Judge has power to direct further inquiry by a Subordinate Magistrate when, in his opinion, an accused has been discharged by such Magistrate in consequence of an improper appreciation of evidence. *Lakshmi Narasappa* v. *Mekala Venkatappa*, (I. L. R., 31 Mad. 133), dissented from. *Queen-Empress* v. *Balasinnatambi*, (I. L. R., 14 Mad. 334) followed.—VENKATA SUBBA REDDI *v.* AYYALU REDDI, I. L. R., 32 Mad. 214.

155. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 436, 287, 288—District Magistrate may, under the section himself, commit for trial—Committing Magistrate in ss. 287, 288 means Magistrate who held preliminary enquiry.*] Under section 436 of the Code of Criminal Procedure, it is competent to a District Magistrate to make a committal himself or to direct a Subordinate Magistrate to make a committal. The words "Committing Magistrate" in sections 287, 288 mean merely the Magis-

Criminal Procedure Code (*contd.*)—

trate holding the preliminary inquiry. Where, therefore, the District Magistrate himself commits for trial, the evidence recorded by the Subordinate Magistrate who held the preliminary inquiry will be receivable as evidence under sections 287, 288 of the Code.—SESSIONS JUDGE OF MANGALORE *v.* MALINGA, I. L. R., 31 Mad. 40.

156. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 437, 119—Power to order further inquiry under s. 437 does not extend to order of discharge under s. 119.*] The power conferred by section 437 of the Criminal Procedure Code to order further inquiry cannot be exercised in the case of orders of discharge under section 119 of the Code, where the Magistrate before making the order of discharge, has called upon the person, into whose conduct the inquiry is made, to establish his defence. The word 'discharged' in section 437 must be read as equivalent to 'discharged within the meaning of sections 209, 253 and 259 of the Code'.—VELU TAYI AMMAL *v.* CHIDAMBARAVELU PILLAI, I. L. R., 33 Mad. 85.

157. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 439—Reference to High Court—Enhancement of sentence—Practice of the High Court to accept the conviction as conclusive.*] It has been the invariable practice of the Bombay High Court, in cases that come before it for enhancement of sentence, to accept the conviction as conclusive and to consider the question of enhancement of sentence on that basis.—EMPEROR *v.* CHINTO, I. L. R., 32 Bom. 162.

158. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 439—Revision—Practice—Discretion of Court as to entertainment of application in revision.*] *Held* that it is not the practice of the High Court to entertain an application for revision on the criminal side, where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been made to the lower Court and has been rejected. *Emperor* v. *Kali Charan*, Weekly Notes 1904, p. 233 and *Gullay* v. *Bakar Husain*, I. L. R., 28 All. 268, followed.—SHAFAQAT-UL-LAH *v.* WALI AHMAD KHAN, I. L. R., 30 All. 116.

159. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 439, 476, 200—Power of High Court to interfere under s. 439 with proceedings of Subordinate Criminal Court under s. 476.*] The High Court has power under s. 439 of the Criminal Procedure Code to interfere on grounds other than want of jurisdiction, when a Criminal Court has taken action under s. 476, Criminal Procedure Code. The words "as if upon complaint made and recorded under s. 200" introduced in the Code of 1898 were not intended to effect any change in the revisional power of the High Court. *Eramholi Athan* v. *King-Emperor* (I. L. R., 26 Mad. 98) overruled.—OTTUPURA NARAYANAN SOMAYAJIPAD *v.* EMPEROR, 33 Mad. 48.

160. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 439—Revision—Practice—Discretion of Court.*] Unexplained delay in applying for revision of an order passed to the prejudice of the applicant is a reason for the High Court, in the exercise of its discretion, declining to interfere.—EMPEROR *v.* JAGAN NATH, I. L. R., 27 All. 468.

161. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 195, 439,—High Court's powers of revision—Sanction to prosecute—Sanction granted by a Civil Court.*] Where sanction to prosecute in respect of several offences under various sections of the Indian Penal Code was granted by a Munsif, and his order was upheld by the District Judge in revision, it was *held* that the High Court had jurisdiction to interfere in revision under s. 439 of the Code of Criminal Procedure. *In re Chennanagoud*, I. L. R., 26 Mad. 139, dissented from. *Held* also that it is not expedient that a sanction to prosecute should be given to a debtor to use against his creditor.—NAZIR HASAN *v.* DOST MUHAMMAD, I. L. R., 26 All. 1.

162. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 439 and 476—High Court's powers of revision—Order passed by a Munsif directing the prosecution of a civil suit.*] Where a Munsif acting under s. 476 of the Code of Criminal Procedure directed the prosecution of a party to a civil suit pending before him; it was *held* by STANLEY, *C.J.*, and BLAIR, *J.*, that the High Court had no jurisdiction in the exercise of its revisional powers on the criminal side under s. 439 of the Code of Criminal Procedure to interfere with such order. *Eranholi Athan* v. *King-Emperor*, I. L. R., 26 Mad. 98; *Kali Prosad Chatterjee* v. *Bhubon Mohini Dasi*, 8 C. W. N. 73; and *Emperor* v. *Muhammad Khan*, Weekly Notes, 1902, p. 202 referred to. *Per* BANERJI, *J.*, *contra*.—The High Court has power under s 439 of the Code of Criminal Procedure to revise an order made under s. 476 of the Code, whether such order be made by a Civil, Criminal or Revenue Court. *Emperor* v. *Muhammad Khan*. Weekly Notes 1902, p. 202; *In the Matter of the petition of Mathura*

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Das, I. L. R., 16 All. 80; *In the Matter of the petition of Alamdar Husain*, I. L. R., 23 All. 249; *Khepu Nath Sikdar* v. *Grish Chunder Mukerji*, I. L. R., 16 Cal. 730; *Chaudhri Mahomed Izharul Huq* v. *Queen-Empress*, I. L. R., 20 Cal. 349; *Queen-Empress* v. *Srinivasalu Naidu*, I. L. R., 21 Mad. 124; *Queen-Empress* v *Rachappa*- I. L. R, 13 Bom 109; *In re Bal Gangadhar Tilak*, I. L. R., 26 Bom. 785; *Eranholi Athan* v. *King-Emperor*, I. L. R, 26 Mad 98, and *Kali Prosad Chatterjee* v. *Bhuban Mohini Dasi*, (8 C. W. N. 73) referred to.—BHUP KUNWAR. IN THE MATTER OF THE PETITION OF—, I. L. R., 26 All. 249.

163. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 439—Revision—Practice—Order of acquittal.*] Although the High Court has the power to interfere in revision with an original or appellate judgment of acquittal, it will ordinarily not do so.—QAYYUM ALI *v.* FAIYAZ ALI, I. L. R., 27 All. 359.

164. CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*ss. 439 and 522—Revision—Powers of High Court—Reversal of order under s. 522.*] *Held* that under s. 439 and s. 423 (1) (*d*), the High Court has power as a Court of revision, to reverse an order passed by a subordinate Court under s. 522 of the Code of Criminal Procedure. *Ram Chandra Mistry* v. *Nobin Mirdha* (I L. R, 25 Cal. 630), distinguished.—MANKI *v.* BHAGWANTI, I. L. R., 27 All. 415.

165. CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*s. 443 et seqq—European British subject—Claim of status as a European British subject without claim to be tried by a jury—District Magistrate—Jurisdiction.*] One G. P. who was sent for trial before a District Magistrate on a charge of rioting under s. 147 of the Indian Penal Code, claimed that he was a European British subject but did not ask to be tried by a jury. The Magistrate after inquiry found that G. P. was not a European British subject, tried and convicted him under s. 147, but passed upon him a sentence, which as District Magistrate he could legally have passed upon a European British subject. G. P. appealed to the Sessions Judge. The Sessions Judge, on the question being again raised, found that G. P. was a European British subject, and thereupon set aside his conviction and sentence and directed that he should be retried by the District Magistrate. *Held* that this procedure was erroneous. Inasmuch as the appellant had never claimed to be tried by a jury, and the Magistrate who had tried and convicted him was competent to try him as a European British subject and had passed a sentence which was not in excess of his powers as a Magistrate trying a European British subject, the Sessions Judge on finding that the appellant was a European British subject should have gone on and heard his appeal on the merits. *Empress of India* v. *Berrill* (I. L. R., 4 All. 141) distinguished.—EMPEROR *v.* GEORGE POWELL, I. L. R., 27 All. 397.

166. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 447, 449—Aden Courts Act (II. of 1864), ss. 17, 20, 22, 23—Resident's Court at Aden—Sessions Court—Transfer of case to the High Court—Jurisdiction of the High Court to transfer a case to itself from the Court of the Resident at Aden—Letters Patent, cl. 29.*] It is not competent to the Resident at Aden, to whose Court as a Court of Session a case is committed under s. 447 of the Criminal Procedure Code, 1898, to transfer the case to the High Court, under the provisions of s. 449 of the Code, on the ground that the offence cannot be adequately punished by him. The powers of the Court of Session conferred upon the Resident at Aden by the Aden Courts Act (II. of 1864) are not merely such as are defined in the Criminal Procedure Code, 1898; but such as are provided expressly in the Act itself. And s. 449 of the Code of Criminal Procedure, 1898, cannot affect those provisions. The High Court of Bombay can, under cl. 29 of the Amended Letters Patent, transfer to itself a case pending in the Court of Session at Aden.—EMPEROR *v.* ROBERT COMLEY, 29 Bom. 575.

167. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 462 (3), 537—European British subject—Jury—Jury not chosen by lot—Illegality.*] *Held* that the provisions of s. 460 (3) of the Code of Criminal Procedure are imperative, and if there is no choosing of the jury by lot, as provided for by the section, the result is that the whole trial is vitiated. *Brojendro Lal* v. *King-Emperor* 7 C. W. N. 188, referred to.—EMPEROR *v.* BRADSHAW, I. L. R., 33 All. 385.

168. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 476—"Brought under the notice of the Court"—Judicial proceeding,"—Decree on an award—Jurisdiction.*] *Held* that the words "brought under its notice," in s. 476 of the Criminal Procedure Code, are wide enough to cover an offence which may have been committed in another *forum* and on some previous occasion. *Held* also that a proceeding in which a court is asked

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to pass a decree in accordance with an award made with reference to a pending suit cannot be said to be other than a "judicial proceeding" within the meaning of the same section. *Girwar Prasad* v. *King Emperor*, 6 A. L. J. 392, *Umrao Singh* v. *Hardeo*, I. L. R., 29 All. 418, and *Banke Bihari Lal* v. *Pokhe Ram* (I. L. R., 23 All. 48) referred to.—EMPRROR *v.* KAMTA PRASAD, I. L. R., 33 All. 396.

169. CRIMINAL PAOCEDURE CODE (ACT V. of 1898)—*s. 476—"Court"—Civil Procedure Code (1908), s. 115—Revision—Inexpediency of order no ground for revision on the civil side.*] The word "Court" in s. 476 of the Code of Criminal Procedure includes the successor of the Judge before whom the alleged offence was committed. *Bahadur* v. *Eradatulla Mullick* (I. L. R., 37 Cal. 642) followed. Whether a particular order is expedient or not is not a ground on which the High Court can interfere in revision under s. 115 of the Civil Procedure Code.—IN THE MATTER OF THE PETITION OF NAWAB SINGH, I L. R., 34 All. 394.

170. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 476—Preliminary inquiry—Revision.*] When a Magistrate takes action under s 476 of the Code of Criminal Procedure. it is not necessary to the validity of his order that he should hold a preliminary inquiry, nor, if he does hold preliminary inquiry, is it necessary that he should give the person against whom such inquiry is being held an opportunity of cross-examining the witnesses. *Queen-Empress* v. *Matabadal*, I. L. R., 15 All. 392, followed.—ABDUL GHAFUR *v.* RAZA HUSAIN, I. L. R., 34 All. 267.

171. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 476—Order for prosecution—Power of successor in office to make order—"Court."*] The summary power conferred by s. 476 of the Criminal Procedure Code (Act V of 1898) can be exercised by the Judge who tries the case in the course of the trial of which the alleged offence is committed, and such power is exerciseable only at, or immediately after, the conclusion of the trial; an application for sanction under s. 195 of the Code can be made later on as an entirely different and independent proceeding. To give true effect to the whole of the language of s. 476 the expression "Court" can only mean the Judge who tries the case. *Krishna Gobinda Dutt, In the Matter of*, 9 C. W. N. 859, is rightly decided. *Per* GEIDT, J.—The terms of s 476 indicate that the desirability of prosecuting the offender must be present to the mind of the Court during the proceedings in the course of which the offence was committed or brought to its notice. It was never intended that when the proceedings had terminated, the attention of the Court should be subsequently drawn by some private person to the fact that in those proceedings there had been committed some offence in contempt of the Court's authority or against public justice which deserved punishment. But no universal rule can be laid down that in no case can the order for a prosecution be made by an Officer other than that before whom the offence was committed. *Emperor* v. *Molla Fazla Karim*, I L. R., 33 Cal. 193, and *Dharmadas Kamar* v. *Sagore Santra*, (11 C. W. N. 119) referred to.—BEGU SINGH *v.* EMPEROR, I. L. R., 34 Cal. 551.

172. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 476—Order under section must be made during or immediately after the conclusion of the proceedings*] On a reference to the Full Bench whether a Magistrate has jurisdiction to take action *suo motu* under s 476 of the Code of Criminal Procedure more than two months after the termination of the proceedings before such Magistrate. *Held* (MILLER, J., dissenting), that it was the intention of the Legislature in enacting s. 476 that an order under the section should be made either at the close of the proceedings or so shortly thereafter that it may reasonably be said that the order is part of the proceeding. *Begu Singh* v. *Emperor*, (I. L. R., 34 Cal. 551), referred to and followed. *In re Subbaraya Vathiar*, (15 M. L. J. 489), referred to and followed The earlier enactments and corresponding English Acts on the subject considered and discussed.—RAHIMADULLA SAHIB *v.* EMPEROR, I. L. R., 31 Mad. 140.

173. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 476—Action under, must be taken at or immediately after the conclusion of the judicial proceedings.*] On the question whether a Court has jurisdiction to take action under s. 476 of the Code of Criminal Procedure at any time after the conclusion of the judicial proceeding in the course of which the offence is committed:—*Held*, by the Full Bench (MILLER, J., dissenting) that the power conferred by s. 476 can be exercised by the Court only in the course of the judicial proceeding or at its conclusion or so shortly thereafter as to make it really the continuation of the same proceeding in the course of which the offence is committed. *Rahimadulla Sahib* v. *Emperor*, (I. L. R., 31 Mad. 140), followed. *In re Lakshmidas Lalji*, (I. L. R., 32 Bom. 184), not followed. *Per* ARNOLD WHITE, C.J.—S. 476 is a self-

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contained section. Sub-s (1) gives the Court power to put the law in motion and sub-s. (2) provides the procedure to be followed when the law has been put in motion. *Per* MITTER, J.—There is nothing to make s 476 inapplicable to any case to which the language of the section applies. The procedure provided by the section is not incompatible with the commencement of action by the Court after the close of the proceeding in the course of which an offence is committed or disclosed. *Per* SANKARAN-NAIR, J.—A Court may grant sanction at any time and to any person whom it considers fit to carry on the prosecution and who is entitled to proceed under s. 190, Criminal Procedure Code. The order under s. 476 is a judicial proceeding and not a complaint under s. 195. *Per* PINHEY, J.—Ss. 195 and 476 must be read together and s. 476 prescribes the procedure to be adopted by the Courts when making a complaint, it was however the intention of the Legislature to restrict their power in this direction and only to suffer it when promptly exercised. The decision in the case of Rahimtulla Sahib does not decide that the final order under under s. 476 of the Criminal Procedure Code must issue at once. The Court must commence to take action under the section promptly, in which case it may be considered as a continuation of the proceedings; and although the final order may be delayed for sometime by necessary enquiries, the order will not be bad for want of jurisdiction.—AIYAKANNU PILLAI *v.* EMPEROR, I. L. R., 32 Mad. 49.

174. CRIMINAL PROCEDURE CODE (ACT V. OF 1893)—*s. 476—Jurisdiction of High Court—Civil jurisdiction—Civil Procedure Code (Act XIV. of 1882), s. 622—Charter Act (24 and 25 Vict. C. 104), s 15—Nature of High Court's revisional jurisdiction—Criminal proceedings, stay of, pending civil appeal—Stay not justifiable, when it would defeat ends of justice*] Where the District Judge has initiated proceedings under s. 476 of the Criminal Procedure Code,—*Held*, first, that it is doubtful, if the High Court exercising civil jurisdiction has power to stay the criminal proceedings; *Held*, secondly, that the provisions of s 15 of the Charter Act of 1861 do not appear to give the High Court power to interfere in the case; *Raj Kumari Debi* v. *Bama Sundari Debi*, I. L. R., 23 Cal. 610, followed. *Held*, thirdly, that the High Court must have regard to the nature of the revisional jurisdiction and must not allow what would virtually be an appeal from the order; *In re Alamdar Husain*, I. L R., 23 All. 249, followed in principle. *Held* lastly that when on the evidence in a case, the Court below is of opinion that it is in the highest degree desirable that the enquiry should be conducted both in the interests of justice as well as of the accused and of all parties concerned as speedily as possible, the High Court would not be justified in staying proceedings, merely because a civil appeal from the judgment, out of which the criminal proceedings were initiated is pending in the High Court. *In re Bal Gangadhar Tilak* (I. L R, 26 Bom. 785) followed.—HEM CHANDRA RAY *v.* ATAL BEHARI RAY, I. L. R, 35 Cal. 909.

174A. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss 476, 4 (m)*. *See* COMPLAINT 17.

175. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 488—Maintenance—Effect of Civil Court decree in a suit for restitution of conjugal rights upon an order for maintenance passed by a Magistrate*] A husband, against whom an order had been passed by a Magistrate under s 488 of the Code of Civil Procedure directing him to pay a monthly allowance of Rs. 4-8 for the maintenance of his wife, brought a suit against his wife for restitution of conjugal rights. The suit was compromised, and a consent decree passed whereby the petitioner was to pay the respondent Rs 4-4 per mensem and to provide a house for her to live in near his own. *Held* that this decree of the Civil Court superseded the order of the Magistrate passed under s. 488 of the Code of Civil Procedure. *In re Bulakidas*, I. L R., 23 Bom 484, followed.—NUR MUHAMMAD *v.* AYESHA BIBI, I. L. R., 27 All. 483.

176. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 488—Magistrate has a discretionary power in granting maintenance—Refusal to grant when woman guilty of adultery with one of lower caste not a wrong exercise of such discretion.*] Under s. 488 of the Code of Criminal Procedure, the Magistrate has a descretionary power to award maintenance, and such discretion is not wrongly exercised when a Magistrate refuses maintenance to a woman who for adultery with one of a lower caste, is expelled from caste and has thus made it impossible for her husband to live with her.—PONNAYER *v.* PERIYA MOOPPAN, I. L. R., 31 Mad. 185.

177. CRIMINAL PROCEDURE CODE, (ACT V. OF 1893)—*ss. 488 and 489—Maintenance of child—Power to cancel an order for maintenance.*] *Held* that where an order has once been passed by a competent Court under s. 488 for the payment of maintenance for a child, the only power that exists of modifying such an order is that given by

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s. 489 of the Code.—BUDHNI *v.* DABAL, I. L. R., 27 All. 11.

178. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 488* (1)—*Maintenance—"Living in adultery."*] *Held* that the fact that a woman who applied for an order for maintenance against her husband had given birth to an illegitimate child some two years before the date of her application, was not a reason for refusing to make an order for maintenance, it being found that since that time she had been living with her parents and leading a chaste and respectable life. *Empress* v. *Nandan*, Weekly Notes, 1881, p. 37. *Petition of Kashi Sheodiala*, Weekly Notes, 1881, p 62. and *Empress* v. *Daulat*, Weekly Notes, 1881, p. 113, referred to.—KALLU *v.* KAUNSILIA, I. L. R., 26 All. 326.

179. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 488, cl. 4—Living in adultery, refer to course of conduct.*] A single act of adultery does not necessarily amount to "Living in adultery" within the meaning of s. 488, clause 4 of the Code of Criminal Procedure, and will not justify a Magistrate in refusing maintenance. "Living in adultery" refers to a course of conduct and means something more than a single lapse from virtue. *Kallu* v. *Kanusilia*, (I. L. R., 26 All. 326), followed.—PATALA ATCHAMMA *v* PATALA MAHALAKSHMI, I. L R., 30 Mad. 332.

180. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 514—Security to keep the peace—Forfeiture of recognizance—Criminal Procedure Code, s. 107; Schedule V. No. 10*]. *Held* that the mere fact that no immediate action under s. 514 of the Code of Criminal Procedure is taken against a person under recognizances to keep the peace, or against his surety, on the conviction of the former of an offence involving a breach of the peace is no bar to the taking of such proceedings at a subsequent time, as, for example, after the time for appealing has expired, or after an appeal by the principal has been dismissed. *In re Ram Chunder Lalla*, I. C. L. R., 134, and *In re Parbutti Churn Bose*, 3 C. L. R., 406, dissented from.—EMPEROR *v.* RAJA RAM, I. L. R, 26 All. 202.

181. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 517, 520—Order for the disposal of property regarding which an offence has been committed—Half currency notes.*] When a question arises between two persons who shall bear a loss resulting from the fraud of a third, the one who has been guilty of negligence shall suffer. Hence where A made over to B halves of certain currency notes as security for payment to

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B of the price of goods delivered, having previously parted with the other halves to C., it was *held* that B was entitled to recover possession of the halves originally made over to him, from C, to whom they had been delivered under an order of the Court, or to obtain compensation from C, if C had parted with them, inasmuch as it was C's negligence which enabled A to perpetrate a fraud upon B. *Foster* v. *Green*, 7 H and N., 881 followed.—ABDUR RAZZAQ *v.* RAHMAT-ULLAH, I. L. R., 27 All. 630.

182. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 517—Delivery of property under—Order of delivery of property on joint receipt—Validity of such order.*] On the discharge of an accused person on a charge of theft of articles admittedly found in possession of that person, on the ground that the accused had a *bona fide* belief in a claim of right to their possession, that person cannot claim return of the articles under s. 517, Criminal Procedure Code, as a matter of course. Under s. 517, Criminal Procedure Code, even where a party is charged with theft and that charge is dismissed or the party is discharged, an order can be made for the delivery of the subject matter of the alleged theft to some party other than the party in whose possession the property was found at the date of the alleged theft. *Kuppammal* v. *Ramaswamy Udayan*, [*Crl. Rn. C. No. 477 of 1905*, (unreported) *followed*. Property, part of which is joint family property and part the self-acquisition of an undivided member of the family may rightly be handed by the Court to the manager of the undivided family and the undivided member on their joint receipt. *Chalakonda Alasani* v. *Chalakonda Ratnachalam* (1864) (2 M H C.R., 56)] distinguished.—KANAGA SABAI *v.* EMPEROR, I. L. R., 34 Mad. 94.

183. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 517—Disposal of property by Magistrate.*] Under the provisions of s. 517 of the Criminal Procedure Code (Act V of 1898) the Magistrate has power to pass an order regarding the property produced before or in custody of the Court, even though no offence has been committed in respect of it. *Surendra Nath Sarma* v. *Kai Mohan Das*, (I. L. R., 30 Cal. 690) referred to.—RUSSUL BIBER *v.* AHMED MOOSAJEA, I L R, 34 Cal. 347.

184. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 520—Magistrate—Order as to disposal of property—On appeal to the Sessions Court the order left untouched—Application to the District Magistrate to revise the order—Jurisdiction—Notice to the other side—Practice.*] In trying a case

Criminal Procedure Code (*contd.*)—

of theft, a Magistrate of the First Class convicted the accused and passed an order disposing of the property produced before him. The Sessions Court, on appeal, confirmed the conviction, but left untouched the order as to the disposal of property. An application was then made to the District Magistrate to raise the order: and he varied it without issuing notice to the other side:—*Held*, reversing the order, that the terms of s. 520 of the Criminal Procedure Code did not give any jurisdiction to the District Magistrate to interfere; and that he could only interfere as a Court of Revision where there had been no appeal to the Sessions Court. *Held*, also, that the District Magistrate ought not to have disposed of the matter without giving notice to the other side.—*In re* LAXMAN RANGU RANGARI, I. L. R., 35 Bom. 253.

185. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s 522—Restoration of immoveable property—Appellate Court, power of—Jurisdiction.*] An order under s. 522 of the Criminal Procedure Code can only be made by the Court which convicts of an offence attended with criminal force. An Appellate Court has no power to make such an order restoring possession of immoveable property. *Narayan Govind* v. *Visaji*, (I. L. R., 23 Bom. 494) referred to.—BHAGBAT SHAHA *v.* SADIQUE OSTAGAR, I. L. R., 39 Cal. 1050.

186 CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 526—Transfer—Riot—Cross cases before same court—Opinion expressed by court on evidence in one case no ground for considering it incompetent to try the other.*] The fact that a court before which there are pending two cross cases of riot has, on the trial of the first case, expressed opinions to some extent unfavourable to the accused in the second case, is no good ground for holding that the court is incompetent to try the second case. *Asimaddi* v. *Gobinda Baidya* (1 C. W. N 426) referred to.—EMPEROR *v.* HARGOBIND, I. L. R., 33 All. 583.

187. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*ss. 526, 107, 117, 118—Security for keeping the peace—Transfer—Jurisdiction.*] S. 526 of the Code of Criminal Procedure enables the High Court to transfer criminal proceedings initiated under s. 107 of the Code, once they have been properly instituted, to any other criminal court of equal or superior jurisdiction (and which otherwise would have no jurisdiction) and the order of the High Court will give jurisdiction to the court to which the case has been so transferred to make an inquiry under s. 117 and to pass an order under s. 118.

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In the Matter of the petition of Amir Singh, I. L. R., 16 All. 9. not followed—EMPEROR *v.* WAHID ALI KHAN, I. L. R., 32 All. 642.

188. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 526—Transfer of criminal case—Magistrate having prejudged accused in other case, sufficient ground for transfer.*] Where the Magistrate has, in a counter case brought by the accused on the same facts, prejudged the guilt of the accused, the High Court will, in the interest of justice, transfer the case against the accused to some other Court—RANGASAMI GOUNDAN *v.* EMPEROR, I. L. R., 30 Mad. 233.

189. CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*ss. 526 and 527—Transfer—Plea that applicant wishes to summon the trying Magistrate as a witness.*] In an application for the transfer to another Court of a criminal case pending against them the applicants alleged that the evidence of the trying Magistrate would be required by the accused touching certain matters connected with the case. It was *held* that inasmuch as the Magistrate was bound under s. 257 of the Code of Criminal Procedure to issue a summons, unless he considered that the application for a summons was made for the purpose of vexation or delay, or for defeating the ends of justice, and it was not proper to leave the decision of such a question to the Magistrate whose evidence was required, the application for transfer ought to be granted.—EMPEROR *v.* ABDUL LATIF, I. L. R., 26 All. 536.

190. CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*s. 526, cl. 8—Application for adjournment to apply for transfer, when to be made—Hearing, commencement of, in Sessions Court.*] The first step in the hearing at a Sessions trial is the reading and explaining of the charge to the accused. An application for adjournment under s. 526 cl. 8, Criminal Procedure Code, must therefore be made before the charge is read to the accused. *Quare.*—Whether a contravention of s 526, cl. 8, will render the trial illegal?—See *In re* KALI MUDALY, I. L. R., 35 Mad. 701.

191. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 531—Section applies to cases where Magistrate tries in respect of offences committed outside his jurisdiction.*] There is nothing in the language of s. 531 of the Code of Criminal Procedure to confine its operation to cases where offences committed within the jurisdiction of a Court are tried by such Court outside the limits of the local area of its jurisdiction. A finding, sentence or order regularly passed by a Court in the case of an offence committed outside its local area cannot be set aside

Criminal Procedure Code (*contd.*)—

when no failure of justice has taken place.—EMPEROR *v.* DORAISWAMY MUDALI, I. L. R., 30 Mad. 94.

192. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 537—Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure.*] Where on an information a summons is issued to the accused, and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons, is not sufficient, under section 537 of the Criminal Prccedure Code, to upset the finding and sentence unless it has in *fact* occasioned "a failure of justice," that is unless it has unfairly affected the accused's defence on the merits.—EMPEROR *v.* JEEVANJI, I. L. R., 31 Bom. 611.

193. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 556—Magistrate ordering prosecution as president of octroi sub-committee—Jurisdiction—Personally interested.*] A Magistrate as the president of the octroi sub committee of a Municipal Board, ordered the prosecution of the accused, and with the consent of the accused tried the case himself. *Held* that the Magistrate must be deemed to have been personally interested within the meaning of s. 556 of the Code of Criminal Procedure and was not qualified to try the case of the applicant, whose consent could not confer jurisdiction upon him. *Emperor* v. *Mohan Lal* (I. L. R., 27 All. 25) distinguished. *In the Matter of the petition of Inayat Husain*, Weekly Notes, 1899, p. 74, referred to.—EMPEROR *v.* BISHESHAR BHATTACHARYA, I. L. R., 32 All. 635.

194. CRIMINAL PROCEDURE CODE (ACT V. OF 1898 —*s. 556—Meaning of "personally interested"—Sub-Committee of Municipal Board advising a prosecution.*] *Held* that a Magistrate, who had been a Member of a Sub-Committee of a Municipal Board which recommended the prosecution of a certain person for an alleged obstruction caused by him in a public thoroughfare, was not, by reason only of this fact "personally interested" in the case afterwards initiated against such person so as to be debarred under s. 556 of the Code of Criminal Procedure from trying it. *The Queen* v. *Handsley*, L. R., 8 Q. B. D., 383 referred to.—EMPEROR *v.* MOHAN LAL, I. L. R., 27 All. 25.

195. CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 556—Meaning of 'personally interested"—Magistrate making himself a witness in a case which he is trying.*] On a day when the Courts were closed for the Christmas holidays two persons came to a Magistrate's private house, and there made an oral complaint to him. When the Courts reopened the same persons filed a written complaint in the Magistrate's Court, which resulted in certain persons being put upon their trial before the same Magistrate for an offence under s. 323 of the Indian Penal Code. During the course of the trial the Magistrate considered it his duty to record his own evidence as to the circumstances attending the making of the oral complaint at his house, and he was duly cross-examined and re-examined. *Held* that the Magistrate could not be considered to be "personally interested" in the case within the meaning of s 556 of the Code of Criminal Procedure. *In the Matter of petition of Ganeshi*, I. L. R., 15 All 192, and *The Queen* v. *Handsley*, L. R., 8 Q. B. D, 383 followed. *Hari Kishore Mitra* v *Abdul Baki Miah*, I. L. R., 21 Cal. 920, *Grish Chandra Ghosh* v. *Queen-Empress* I. L R., 20 Cal. 857, *Queen-Empress* v. *Manikam*, I. L. R., 19 Mad. 263, and *Serjeant* v. *Dale*, L. R., 2 Q. B. D., 558, referred to. — EMPEROR *v.* NANHE, I. L. R., 27 All 33

196 CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*s. 565—Indian Penal Code (Act XLV. of 1860), s. 75—Whipping Act (IV. of 1909), s 3—Sentence of whipping only passed on accused—Order to accused to notify his residence — Validity of the order.*] S. 565 of the Criminal Procedure Code (Act V. of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court, instead of passing that sentence, passes a sentence of whipping.—EMPEROR *v.* FULJI DITYA, 35 Bom 137.

197. CRIMINAL PROCEDURE CODE (ACT V. of 1898)—*s. 565 (4)—Penal Code, ss. 176, 177—Meaning of words "for the commission of an offence."*] The second part of s. 176 of the Penal Code, which provides an aggravated punishment for omitting to give notice to a public servant, when such notice is required for preventing the *commission of an offence*, applies only when the object is to prevent the commission of a *particular offence*, and not of offences generally. The notice of residence required to be given by convicted persons under s 565 (4) is not required for preventing the commission of *any paiticular* offence and the failure to give such notice must be dealt with under the first part of s. 176 of the Penal Code.—EMPEROR *v.* HUSSAIN BEG, I. L. R., 31 Mad. 548.

Criminal Proceedings—

1. CRIMINAL PROCEEDINGS, LEGAL INSTITUTION OF — *Police report not disclosing nature of information—First information report omitting to state the information received—Information given by police officer to himself—Criminal Procedure Code (Act V. of 1898) ss. 154, 173, 190, (1) (b).*] A prosecution is not legally instituted under s. 190 (*1*) (*b*) of the Criminal Procedure Code when the police report under s. 173 does not set forth the nature of the information, and the first information report under s 154 is equally defective in this respect.—LEE *v* ADHIKARY, I. L. R., 37 Cal. 49.

2. CRIMINAL PROCEEDINGS, STAY OF— *Pendency of civil suit—Letter alleged to be forged set up as a defence—Genuineness of letter a principal issue in the case—Subsequent institution of criminal proceedings for forgery in respect of the same.*] Where after the institution of a civil suit on a promissory note the defendant was called upon to furnish security, and set up, as an answer, to the plaintiffs' claim, a letter which was alleged to bear a forged signature and in respect of which criminal proceedings under s. 465 and 467 of the Penal Code were taken by one of the plaintiffs :—*Held*, that inasmuch as the letter was a necessary part of the defendant's case and the question of its genuineness a principal issue in the suit, the criminal proceedings ought to be stayed pending the decision in the civil suit.—SHASHI BHUSHAN SEAL *v.* EMPEROR, I. L. R., 38 Cal 106.

3 CRIMINAL PROCEEDINGS, STAY OF, PENDING CIVIL SUIT.—Upon an application in revision to stay criminal proceedings pending in a Magistrate's Court until the disposal of a civil suit in regard to the same subject-matter. *Held* that the High Court ought not to interfere except on good cause shown. That as this was not a private prosecution, but one directed by the District Judge in what he believed to be the interests of justice, and as the witnesses were related to the accused, it was desirable that the evidence should be recorded without delay and that the Magistrate should proceed forthwith to make the preliminary inquiry prior to commitment. — DWARKA NATH RAI CHOWDHRY *v.* EMPEROR, I. L. R, 31 Cal. 858.

Criminal Revision—

CRIMINAL REVISION — *Practice — Jurisdiction of High Court—Rule issued on one or more of several grounds in a petition, and ultimately discharged—Fresh Rule on the grounds of the same petition.*] When a rule has been granted on one or more of several grounds contained in a petition and

Crfminal Revision (*contd.*)—

is ultimately discharged, the High Court has no jurisdiction to issue a fresh rule, in the same case, on the other or some of the other grounds of the petition, which were considered on the first occasion, unless permission was given to the party, at the time of the discharge of the first rule, to renew the application on the other grounds or some of them. *Rai Radha Gobind* v. *Gossain Mohendro Gir*, 6 C. W. N 340, and *Bibhuty Mohan Roy* v. *Dasimoni Dassi*, 10 C. L. J. 80, referred to.—JOYMANGAL PERSHAD NARAIN SINGH *v.* JHAGROO SAHU I. L R., 38 Cal. 933.

Criminal Trespass—

1. CRIMINAL TRESPASS—*House trespass by night.*] The accused was found inside the house of the complainant at midnight, and his presence was discovered by the wife of the complainant crying out that a thief was taking away her hansli. The evidence of the complainant clearly showed that the accused was not there with the consent, or at the invitatation, or for the pleasure, of the complainant. *Held* that the accused was properly convicted under s 456 of the Indian Penal Code, it being for him to show that his intention was under the circumstances innocent. *Brij Basi* v. *The Queen-Empress*, (I. L. R., 19 All. 74) distinguished. *Balmakund Ram* v. *Ghansamram*, (I. L. R., 22 Cal. 391) followed.—EMPEROR *v.* ISHRI, I. L. R., 20 All. 46.

2 CRIMINAL TRESPASS—*Criminal Procedure Code—(Act V. of 1898), s. 522—Order for restoration of possession of immoveable property — Conviction of accused on charge of criminal trespass—No finding of use of criminal force—Illegality of order for restoration.*] Certain persons were convicted of having committed criminal trespass on a piece of land, under s. 447 of the Indian Penal Code. There was no finding that they had used criminal force, or that the complainant had been dispossessed of the land by such force An order was subsequently made, which purported to be under s. 522 of the Code of Criminal Procedure directing the accused to restore possession of the land. On a revision petition being preferred against this order :—*Held*, that as there was no finding that criminal force had in fact been used, or that complainant had been dispossessed of the land by it, and as criminal force was not an ingredient of the offence for which the accused had been convicted. the order was made without jurisdiction.—BATAKALA POTTIAVADU, I. L. R., 26 Mad. 49.

3. CRIMINAL TRESPASS—*Penal Code (Act XLV. of 1860), s. 441.*] When a zemindars, under the 'pretext that one of his tenant

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had left the village and abandoned his holding, took possession of the tenant's holding wrongfully, it was *held* that, in the absence of evidence of one of the objects specified in s. 441 of the Indian Penal Code the zemindar could not properly be convicted of criminal trespass, his intention apparently being merely to get possession of the land. *King-Emperor* v. *Nandan* (Weekly Notes, 1902, p. 42 distinguished. —EMPEROR *v.* JANGI SINGH, I. L. R., 26 All. 194.

4. CRIMINAL TRESPASS—*Penal Code (Act XLV. of 1860), s. 441—Occupation by zemindar.*] A tenant of village *S* who owned a house there, but was temporarily residing in a neighbouring village, died, and on his death the zamindars of *S* took possession of the house in *S* adversely to the tenant's widow, alleging that they were entitled to it. *Held* that the action of the zemindars could not be taken as amounting to criminal trespass within the meaning of s 441 of the Indian Penal Code. *Emperor* v. *Jangi Singh* (I. L R., 26 All. 194) referred to.—EMPEROR *v.* BAZID, I. L. R., 27 All. 298.

5. CRIMINAL TRESPASS—*Held* RATTIGAN, J., dissenting, that, where a person claiming a title to property, whether his title be good or bad, enters without any legal justification upon property in the established posssession of anotner, he must be inferred to have had an intent to annoy the person in possession within the meaning of s. 441 of the Indian Penal Code, even though he had no primary desire to annoy, and his only object was to obtain possession for himself.—RAM SARAN *v.* KING-EMPRROR, 12 P. R. Cr., F. B.

6. CRIMINAL TRESPASS—*Mischief—Entry by a servant upon land in the possession of the Court of Wards and cutting bamboos thereon under the order of the owner—Penal Code (Act XLV. of 1860), s. 426, 447.*] A servant of a proprietor who has voluntarily surrendered his estate to the Court of Wards does not commit criminal trespass or mischief by cutting or removing bamboos, etc, growing thereon, for the benefit of his master, under the circumstances of this case—PARMESWAR SINGH *v.* EMPEROR, I. L. R., 38 Cal. 180.

Cross-examination—

1. CROSS-EXAMINATION—*Cross-examination of prosecution-witnesses before charge—Right of accused to have prosecution-witnesses recalled after charge drawn up for purposes of cross examination—Discretion of Magistrate—Criminal Procedure Code (Act V. of 1898), ss. 254 256, 257—Penal Code (Act XLV. of 1860), s. 342.*] After a

Cross-examination (*contd.*)—

charge has been drawn up, the accused is entitled to have the witnesses for the prosecution recalled for the purposes of cross-examination: s. 256 of the Criminal Procedure Code (Act V. of 1898) gives the Magistrate no discretion in the matter. After a charge has been drawn up, it is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has been already some cross-examination before the charge has been drawn up, does not affect this privilege. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application, on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice.—ZAMUNIA *v.* RAM TAHAL I L. R., 27 Cal. 370.

2. CROSS-EXAMINATION — *Witness—Accused—Defence—Evidence Act (I of 1872), s. 154—Code of Criminal Procedure (Act V. of 1898), s. 257—Prosecution.*] Certain witnesses for the prosecution were examined. The accused applied to the Court for an adjournment to enable them to cross-examine the witnesses by Counsel The application was refused, and the accused being called upon to cross-examine were not in a position to do so. The accused then applied that the witnesses should be summoned as witnesses for the defence. The witnesses were summoned and when the Counsel for the accused proceeded to cross-examine them he was not allowed to do so. *Held*, the mere fact that the accused had been compelled to treat the witnesses for the prosecution as their own witnesses did not change their character. That, although the accused were compelled to obtain their attendance as witnesses for the defence, they were really summoned under s. 257 of the Code of Criminal Procedure "for the purpose of cross-examination," and the Magistrate was wrong in refusing to allow their cross examination. — SHROPRAKASH SINGH *v.* W. D. RAWLINS, I. L. R., 28 Cal. 594.

3. CROSS EXAMINATION — *Witness, examined by Court—Opportunity to accused to cross-examine — Dishonestly receiving stolen property — Possession of forged or counterfeit currency notes—Distinct offences —Separate trial—Criminal Procedure Code (Act V. of 1898), ss. 233 and 540—Penal Code (Act XLV. of 1860), ss 411 and 489 (c).*] During the trial of a case the accused obtained a process for the attendance of a witness. Before the witness appeared the accused asked the Court to countermand the order for his attendance, but the Court

Cross-examination (*contd.*)—

refused to do so. When the witness attended, the accused declined to examine him. He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so: *Held*, that under the circumstances the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross examine him. *Held* also, that offences under ss. 411 and 489 *(c)* of the Penal Code are distinct offences and should be tried separately.—MOHENDRO NATH DAS GUPTA *v.* EMPEROR, I. L. R, 29 Cal. 387.

4. CROSS EXAMINATION—*Prosecution witnesses, cross examination of, after charge—Failure to name, on date of the charge, the witnesses required for cross-examination—Subsequent application before close of the case—Right of cross-examination, continuance of—Waiver—Criminal Procedure Code (Act V. of 1898), s. 256.*] Section 256 of the Criminal Procedure Code merely lays down that after the plea of the accused is taken he shall be required to state whether he wishes to cross-examine any, and if so which, of the prosecution witnesses whose evidence has been taken, but it does not state at what particular time he is to be asked this question, nor up to what time he has this right. Where, therefore, the accused were asked, on the day the charges were framed, whether they would call any of the prosecution witnesses for cross-examination and did not name any, but made an application to recall some of them for that purpose on the next Court day and before the case had closed:—*Held*, that they were entitled to have the prosecution witnesses recalled for the purpose of cross-examination, and that there was no waiver of their right under the section.—INDER RAI *v.* C. R. BROWN, I. L. R., 37 Cal. 236.

Crown Prosecution—

CROWN. PREROGATIVE OF—On an application for leave to appeal from the sentence of the Sudder Nizamut Adalut, the judicial committee, though of opinion that justice had not been done in the Court below, declined to determine the question of the prerogative of the Crown to admit in appeal in a criminal matter, and to advise such admission, on the ground that such course might be detrimental to the general administration of Criminal justice in her Majesty's colonia land foreign possession; but suggested an application by the petitioner to the executive authorities for relief, with an intimation of their Lordship's opinion of the hardship and injustice of the particular

Crown prosecution (*contd.*)—

case.—THE QUEEN *v* JOYKISHEN MUKHERJIE 9 M. I A. 172.

Cruelty to Animals—

CRUELTY TO ANIMALS—*Animals—Prevention of Cruelty to Animals Act (XI. of 1890), s. 3—Police Bombay Town (Act XLVIII. of 1860), s 21—Railway Company—Master and servant--Criminal liability of master for his servant's acts—Goods yard of a railway—Public place.*] The G. I. P. Railway Company carried twenty seven head of cattle from Talegaon to Bombay. These cattle were put in one truck by their owner under the supervision of the Company's goods clerk at Talegaon, and were so allowed to be put by the Company's servants at Talegaon in spite of a circular issued to them by the Traffic Manager to prevent the overcrowding of cattle When the cattle were detrained at the goods yard of the Company at Wadi Bundar, they were found suffering from the effects of overcrowding. The Bombay Society for the Prevention of Cruelty to Animals prosecuted the R ilway Company under s. 21 of Act XLVIII. of 1860 and s 3 *(b)* of the Act for the Prevention of Cruelty to Animals (Act XI of 1890). The Presidency Magistrate, who tried the case, referred to the High Court the following two questions: (1) is the Company liable, under the above circumstances, for the acts of the owner of the cattle and the goods clerk at Talegaon under s. 3 (*b*) of Act XI. of 1890, though they may have no knowledge as to how the animals were carried? (2) Is the Wadi Bundar goods station a place accessible to the public when the Company's orders are that men on business alone should be admitted there? The High Court answered the first question in the negative and the second in the affirmative. Act XI. of 1890 is aimed at the individual who actually practises the cruelty, and it was not intended by the Legislature to make a master penally liable for the act of his servant done in the course of the servant's employment, and certainly not when the act is done contrary to the orders of the master.—COWASJI M. SHROFF *v.* G. I. P. RAILWAY COMPANY, I. L. R, 26 Bom. 609.

Custody—

CUSTODY—*Detention in—Security for keeping the peace—Arrest—Bail, right to—Power to re arrest—Criminal Procedure Code (Act V. of 1898) ss. 107, 114, 115, 496, 498.*] Where proceedings have been instituted against a person under s. 107 of the Criminal Procedure Code, it is only in the special circumstances referred to in clauses (3) and 4) of that section that the law empowers a Magistrate to detain the person

Custody (*contd.*)—

in custody until the completion of the inquiry. Section 496 of the Code is imperative, and under its provisions the Magistrate is bound to release such person on bail or recognizances. *Quære*: whether the proviso to s. 114 of the Code empowers a Magistrate to re-arrest a person who has already appeared and been admitted to bail.—RAGHUNANDAN PERSHAD AND OTHERS *v.* EMPEROR, I. L. R., 32 Cal. 80.

D.

Dacoity—

1. DACOITY—*Indian Penal Code (Act XLV of 1860), ss. 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction, under what sections to be recorded*] Where several persons were found endeavouring to break into a house, and some of them being armed, used violence, but only in attempting to escape being arrested, it was *held* that they could not properly be convicted under s. 397 read with s. 511 of the Indian Penal Code. *Queen* v. *Koonee* (7 W. R. 48), referred to.—QUEEN-EMPRESS *v.* BENI, I. L. R., 23 All. 78.

2. DACOITY—*Penal Code, s. 402—Assembling for the purpose of committing dacoity—Evidence.*] Several persons were found at 11 o'clock at night on a road just outside the city of Agra, all carrying arms (guns and swords) concealed under their clothes. None of them had a license to carry arms, and none of them could give any reasonable explanation of his presence at the spot under the particular circumstances. *Held* that these persons were rightly convicted under s. 402 of the Indian Penal Code of assembling together with intent to commit dacoity. *The Deputy Legal Remembrancer* v. *Karuna Baistobi* (I. L. R., 22 Cal. 164), *Balmakand Ram* v. *Ghansam Ram* (I. L. R., 22 Cal 391), and *Queen-Empress* v. *Papa Sani* (I. L. R. 23 Mad. 159) referred to.—QUEEN-EMPRESS *v.* BHOLU, I. L. R., 23 All. 124.

3. DACOITY—*Penal Code, s. 397—Dacoity with use of deadly weapons.*] *Held* that s. 397 of the Penal Code applies only to the actual person or persons who at the time of committing robbery or dacoity may use any deadly weapon, or may cause grievous hurt to any person, or may attempt to cause death or grievous hurt to any person. *Queen-Empress* v. *Mahabir Tewari*, (I. L. R., 21 All. 263), referred to.—EMPEROR *v.* NAGESHWAR, I. L. R., 28 All. 404.

4. DACOITY—*Held* that s. 397 of the Penal Code applies only to the actual

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person or persons who, at the time of committing robbery or dacoity, may use any deadly weapon, or may cause grievous hurt to any person, or may attempt to cause death or grievous hurt to any person. *Queen-Empress* v. *Mahabir Tewari* (I. L. R., 21 All. 263) referred to.—EMPEROR *v.* NAGESHWAR, I. L. R., 28 All. 404.

Death by Rash or Negligent Act—

DEATH BY RASH OR NEGLIGENT ACT—*Indian Penal Code (Act XLV. of 1860), ss 304A, 336, 337 and 338—Compensation to relative for death by rash or negligent act—Criminal Procedure Code (Act V. of 1898), s. 545.*] Two persons, one a corporal and the other a private who had both been in the regiment over four years, went to a plantation at the edge of which there was an eminence on which they set up at the sky line a small tin case as a target, and fired several shots at it, from a distance of 100 feet, with a quarter inch bore saloon rifle sighted to 100 yards. There was a public road used by the villagers about 150 yards away, and 60 feet below the level of the eminence, but in the direct line of fire. The road was not visible from the firing point, but clearly so from the target. A bullet struck a man passing along the road at a spot in the line of fire, though it did not appear, who had fired the shot. No precautions of any kind were taken to prevent danger to passers-by on the road from such firing. *Held*, that they were both guilty of criminal rashness and negligence within s. 304A read by itself without reference to ss 34 and 107, in firing at an object on the sky-line of the eminence, against the light (which was in itself dangerous), near a public road within the zone of fire with a rifle which, sighted to a 100 yards, they must have known might easily carry some considerable distance beyond and prove fatal, without taking any precautions or using the slightest circumspection with reference to the safety of others. The words "rash or negligent act" in s 304A of the Penal Code have the same meaning as "does any act so rashly or negligently" in ss. 336, 337 and 338. S. 336 renders criminal the doing of any act so rashly or negligently as to endanger human life or the safety of others, irrespective of the consequences. Ss. 337 and 338 only impose a greater punishment when hurt or grievous hurt is the result of such rashness or negligence. S. 304A provides for the case of death by such rash or negligent act under circumstances not amounting to culpable homicide. *Reg.* v. *Salmon*, L. R. 6 Q. B.

Death by Rash or Negligent Act (*ctd.*)

D. 79, and *Reg.* v. *Nidamarit Nagabhushanam*, 7 Mad. H. C. 119. S. 545 (1) (*b*) provides for compensation, in cases where it is recoverable under Act XIII. of 1855, to the persons therein indicated, *viz.*, "the wife, husband, parent and child, if any" of the deceased. *Yalla Gangulu* v. *Mamidi Dali* (I. L. R., 21 Mad. 74) dissented from.—EMPEROR *v.* MORGAN, I L. R, 36 Cal. 302.

Defamation—

1. DEFAMATION—PRIVILEGE—*An accused person is privileged in respect of questions put in good faith for the purpose of defending himself—Publication.*] The rule of English Law "that no action of libel or slander lies whether against Judge, Counsel, witnesses, or parties for words written or spoken in the ordinary course of any proceeding before any Court, or tribunal, recognised by law" will also apply to an accused person in respect of questions put by him in good faith for the purpose of defending himself. A party receiving a notice is entitled to reply to the notice and state his reasons, and such reply is privileged so long as it is confined to the matter in hand and is relevant, provided the reply is not published by the person making it. Where such reply is a mere acknowledgment that the party had made the imputations complained of in the notice, relief can be claimed only in respect of the original imputations.—PACHAIPERUMAL CHETTIAR *v.* DASI THAMGAM, I. L. R., 31 Mad. 400.

1A. DEFAMATION—*Charge — Publication —Malice, omission to apologise no proof of — Penal Code (Act XLV. of 1860), ss. 499 and 500—Criminal Procedure Code (Act V. of 1898), s. 222.*] Where an accused person was convicted of defamation under s. 500 of the Penal Code, upon a charge which set out that the defamation was committed on or about the 12th day of April, and afterwards, by describing the complainant as a *Brithial Bania:—Held*, that the charge was not a proper charge, inasmuch as it did not set forth the particular occasions on which the defamation was said to have been committed, so as to give the accused person an opportunity of defending himself with reference to each act alleged to have been committed by him. Where the accused, who was the collecting *punchait* of his village, was alleged to have defamed the complainant by giving a *chowkidari* receipt to him, in which he was described by the designation of *Brithial Bania: Held.* that the delivery of such a receipt was not a publication such as would render the accused liable to punishment for defamation,

Defamation (*contd.*)—

nor could the omission of the accused to apologise to the complainant subsequently, for the use of the caste designation, be taken as indicating that he used it at the time with a malicious intention.—BISHWANATH DASS *v.* KESHAB GANDHABANIK, I. L. R., 30 Cal. 402.

2. DEFAMATION—*Penal Code—(Act XLV. of 1860), s. 500 — Criminal Procedure Code—(Act V. of 1898), s. 198—Person aggrieved—Defamation of subordinate officers of Municipality—Complaint by President—Maintainability.*] A newspaper published articles which, for the purposes of the point of law to be determined, were assumed to be defamatory. These related to the conduct of certain subordinate officers of the Madras Municipal Commission. A complaint was lodged by the President of the Commission in respect of the alleged defamation, it being contended on behalf of the complainant that, inasmuch as by the Madras Municipal Act the President is responsible for the efficient discharge of their duties by his subordinate officers, his conduct and administration had been impugned by the articles:—*Held*, that assuming for the purposes of the question under consideration that the statements complained of were defamatory of the subordinate officers of the Municipal Health Department, they were not defamatory of the complainant; and that the complainant was not a "person aggrieved" within the meaning of section 198 of the Code of Criminal Procedure.—BEAUCHAMP *v.* MOORE, I. L. R, 26 Mad. 43.

3. DEFAMATION—*Penal Code, s. 500—True statement that complainant had been convicted of theft and sent to jail—Conviction—Validity.*] An accused, who was the trustee of a temple, was convicted of defamation, the alleged defamatory statement being that the complainant, who performed the worship in a temple, had been convicted and sent to jail for the theft of idols belonging to the temple. At the time when the statement was made, an appointment was in question in connection with the temple:—*Held*, on revision, that the accused was justified in making the statement, either in the interest of the temple, or because the statement was no more than a publication of the result of proceedings in a Court of Justice.—SINGARAJU NAGABHUSHANAM, I. L. R., 26 Mad. 464.

4. DEFAMATION — *Pleader — Improper questions in cross-examination based on wrong inference from defective memory—Privilege—Good faith—Absence of express malice—Penal Code (Act XLV. of 1860), ss.*

Defamation (*contd.*)—

52 and 499, Exception (9).] A pleader acting upon his own recollection of the evidence given by a witness two years before, in another case in which he was a pleader, but drawing a wrong inference therefrom that the witness had been disbelieved by a particular Court, and had admitted to having been so disbelieved, and putting questions to him conveying such an imputation, after being warned that his impression was wrong, cannot, in the absence of actual malice, be convicted of defamation. A pleader, especially in the mofussil, where instructions are very commonly inaccurate and misleading, is as much justified in acting on his own recollection as on specific instructions, and the fact that he has drawn a wrong inference does not, in the absence of actual malice, deprive him of the protection of the ninth exception to section 499 of the Penal Code. When a pleader is charged with defamation, in respect of words spoken or written, while performing his duty as a pleader, the Court ought to presume good faith, and not hold him criminally liable, unless there is satisfactory evidence of actual malice and unless there is cogent proof that unfair advantage was taken of his position as a pleader for an indirect purpose. *In re Nagarki Trikamji*, I. L. R., 19 Bom. 340, and *Emperor* v. *Pursholtamdas Ranchhoddas*, (9 Bom L. R. 1287) followed.—UPENDRA NATH BAGCHI *v.* EMPEROR I L. R. 36. Cal. 375.

5. DEFAMATION—*No prosecution lies for, in respect of answers given by a party to questions asked by Court.*] It is contrary to public policy that a person bound to state the truth in answer to questions put to him by a Court should be liable to be prosecuted for defamation in respect of answers so given, though untrue and not given in good faith. *Manjaya* v. *Sesha Shetti*, (I. L. R., 11 Mad 477). followed.—IN THE MATTER OF "ALRAJA NAIDU" I. L. R., 30 Mad. 222.

6. DEFAMATION—*Voluntary statement by witness—Privilege of witness — Malice—False Evidence—Penal Code (Act XLV. of 1860) s. 500—Evidence Act (I. of 1872) s. 132.*] A witness, who being actuated by malicious motives makes a voluntary and irrelevant statement not elicited by any question put to him while under examination to injure the reputation of another, commits an offence punishable under s. 500 of the Penal Code. *Moher Sheikh* v. *Queen-Empress* (I. L. R., 21 Cal. 392) followed. *Woolfun Bibi* v *Jesarat Sheikh* (I. L. R., 27 Cal. 262) discussed.—HAIDAR ALI *v.* ABRU MIA, I. L. R., 32 Cal. 756.

Defamation (*contd.*)—

7. DEFAMATION—The object of exception 6 to s. 499 of the Indian Penal Code (Act XLV. of 1860) is, that the public should be aided by comment in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him: he is also bound in the words of the exceptions to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment —EMPEROR *v.* ABDOOL WADOOD, I. L. R., 31 Bom. 293.

8 DEFAMATION—A witness, who being actuated by malicious motives makes a voluntary and irrelevant statement, not elicited by any question put to him while under examination, to injure the reputation of another, commits an offence punishable under s 500 of the Penal Code. *Moher Sheikh* v. *Queen-Empress* (I. L. R., 21 Cal. 392) followed. *Woolfun Bibi* v. *Jesarat Sheikh* (I. L. R., 27 Cal. 262) discussed.—HAIDAR ALI *v.* ABRU MIA, I. L R., 32 Cal. 756.

9. DEFAMATION—Where an accused person was convicted of defamation under s. 500 of the Penal Code, upon a charge which set out that the defamation was committed on or about the 12th day of April, and afterwards, by describing the complainant as a *Brithial Bania held* that the charge was not a proper charge, inasmuch as it did not set forth the particular occasions on which the defamation was said to have been committed, so as to give the accused person an opportunity of defending himself with reference to each act alleged to have been committed by him. Where the accused, who was the collecting *panchait*

Defamation (*contd.*)—

of his village, was alleged to have defamed the complainant by giving a *chowkidari* receipt to him, in which he was described by the designation of *Brithial Bania*, *held* that the delivery of such a receipt was not a publication such as would render the accused liable to punishment for defamation, nor could the omission of the accused to apologise to the complainant subsequently for the use of the caste designation be taken as indicating that he used it at the time with a malicious intention.—BISHWANATH DASS *v.* KESHAB GANDHABANIK, I. L. R., 30 Cal 402.

10. DEFAMATION—*Cause of action—Damages for loss of reputation caused by defaming a wife—Suit for slander brought by a husband whether maintainable—Special damages.*] *A* instituted a suit against *B* for defamation. The words used alleged unchastity on the part of *A's* wife. *A* alleged (*a*) special damage, (*b*) that the words were defamatory in themselves, (*c*) that he himself was defamed and was therefore entitled to sue. *Held* that the words used defamed *A* as well as his wife and therefore *A* could maintain an action. *Held* further that the words used by *B* were defamatory in themselves and did not amount to mere verbal abuse and that therefore *A* was entitled to damages without proving special damage. *Girish Chunder Mitter* v. *Jatadhari Sadhukhan*, (I. L. R., 26 Cal. 653) distinguished. *Ibiri Hosein* v *Haidar*, I. L. R., 12 Cal. 109, *Trailakhya Nath Ghose* v. *Chandra Nath Dutt*, I. L. R., 12 Cal. 424, *Jogeswar Sarma* v. *Dinaram Sarma*, 3 C. L J 140 and *Paronthi* v. *Manna*, I L R., 8 Mad 175 referred to. *Held* also, that the cause of action having arisen in the mofussil the suit was not governed by the rule laid down in *Bhooneymoni Dassi* v. *Natobar Biswas*, I. L. R., 28 Cal. 452.—SUKKAN TELI *v.* BIPAD TELI AND ANOTHER, I. L. R., 34 Cal. 48.

11. DEFAMATION—A newspaper published articles which, for the purposes of the point of law to be determined, were assumed to be defamatory. These related to the conduct of certain subordinate officers of the Madras Municipal Commission. A complaint was lodged by the President of the Commission in respect of the alleged defamation, it being contended on behalf of the complainant that, inasmuch as, by the Madras Municipal Act, the President is responsible for the efficient discharge of their duties by his subordinate officers, his conduct and administration had been impugned by the articles. *Held* that, assuming for the purposes of the question under consideration that the statements complained of were defamatory of the subordinate officers of the Municipal Health Department, they were not defamatory of the complainant; and that the complainant was not a "person aggrieved" within the meaning of s. 198 of the Code of Criminal Procedure.—BEAUCHAMP *v.* MOORE I. L. R., 26 Mad. 43.

12. DEFAMATION—It is contrary to public policy that a person bound to state the truth in answer to questions put to him by a Court should be liable to be prosecuted for defamation in respect of answers so given, though untrue, and not given in good faith. *Manjaya* v. *Sesha Shetti* (I. L. R., 11 Mad. 477) followed.—IN THE MATTER OF "ALRAJA NAIDU," I L. R, 30 Mad. 222.

13. DEFAMATION—In an action to recover damages for libel if it is proved that what the defendant wrote was written *bona fide* in answer to the attack made on him by the plaintiff, and for the sole purpose of defending himself from such an attack, then the occasion is privileged. *O'Donoghue* v. *Hussey* (Ir. R, 5 C. L. 124) referred to. But, if the statements made are false to the knowledge of the defendant, or if a portion of the statements is irrelevant and unconnected with the matter in dispute, then the privilege of the occasion is destroyed, or rather there would then be evidence of express malice to destroy the privilege. *Clark* v. *Molyneux* (3 Q. B D 237) and *Picton* v. *Jackman* (4 C and P. 257) referred to. The proper test in enquiring whether the nature of the words by themselves afford evidence of malice is to take the facts as they appeared to the defendant's mind at the time of publication, and to ask whether the words used are such as the defendant might have honestly and *bona fide*, under the circumstances, employed: and the particular expressions used ought not to be too closely scrutinised, provided the intention of the defendant was good and he acted *bona fide*. *Spill* v *Maule* (L. R., 4 Exch. 232), *Woodward* v. *Lander* (6 C. and P. 548), and *Laughton* v. *Bishop of Sodor and Man* (L R, 4 P. C. 495) referred to—AMRITA NATH MITTER *v.* ABHOY CHARAN GHOSH, I. L. R., 32 Cal. 318.

14. DEFAMATION — *Proof necessary in charge of defamation—Penal Code (Act XLV. of 1860), ss. 499, 500.*] To constitute the offence of defamation as defined in s 499 of the Penal Code, it is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation The law re-

Defamation (*contd.*)—

quires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm. or knowing or having reason to believe that such imputation will harm, the reputation of such person.—GOBINDA PERSHAD PANDEY *v.* GARTH, I. L. R , 28 Cal. 63.

15. DEFAMATION—*Penal Code (Act XLV. of 1860), s. 499—Statement made by an accused person in an application to a Court—Statement made in good faith for the protection of the interests of the person making it.*] In an application for the transfer of a criminal case, the applicants alleged, with some apparent reason, that the case had been falsely got up against them by the complainant at the instigation of one Umrao Singh, in order to prejudice them in their defence in a civil suit which Umrao Singh had caused to be brought against them. *Held* that this statement did not amount to defamation—not because of the application of any principles of English law, for such principles did not apply to prosecutions for defamation under the Penal Code—but because the statement fell within the ninth exception to s. 499 of the Penal Code. *Queen-Empress* v. *Balkrishna Vithal* (I L. R., 17 Bom 573), *In re Nagarji Trikamji* (I. L. R., 19 Bom. 340), *Queen* v. *Pursoram Doss* (3 W. R 45), *Greene* v. *Delanney* (14 W. R. 27), and *Abdul Hakim* v. *Tej Chandra Mukerji* (I. L. R., 3 All. 815), referred to.—ISURI PRASAD SINGH *v.* UMRAO SINGH, I. L. R., 22 All. 234.

16 DEFAMATION—*Penal Code (Act XLV. of 1860), s. 499 expl. (i)—Criminal Procedure Code (Act V. of 1898), s 4 (a), Ch. XV. Pt. B, ss. 191, 195, 196, 198, 199, and 345—Defamation of wife—Complaint by husband—Aggrieved party.*] *Held* by the Full Bench (RANADE, *J.*, dissenting) that under the provisions of the Criminal Procedure Code (Act V of 1898) a husband is entitled to be complainant where the alleged offence is defamation, imputing unchastity to his wife.—CHHOTALAL *v.* NATHABHAI, I. L. R., 25 Bom. 151.

17. DEFAMATION — *Indian Penal Code (Act XLV. of 1860), s. 499, Exceptions 3, 6, 9, s. 500, 52 — Comment—Right of fair comment—Comment should be suggested by and confined to the work under review—Good faith, tests of—Malice, interpretation of the term.*] The word "malice" in the legal use of that term is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind which is wrong or faulty (whether evidenced in action by excess or defect), such as would be unjustifiable in the circumstances and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment which is the subject of the complaint. For whether fair comment is to be regarded as falling under a branch of the law of privilege or not, it cannot excuse an injury arising, not from the mere act of criticism, but from a state of mind in the critic which is in itself unjustifiable and the excuse may be so forfeited either by reason of an evil intent in him, or by reason of mere recklessness in making an unwarrantable assertion. For then the comment would not be fair comment at all. Apart from extrinsic evidence of malice, protection must be withheld even from what purports to be criticism, if it states as a fact to be inferred from the book criticised, an imputation for which the book itself contains absolutely no foundation whatever. The right of fair comment involves two essentials, first that the imputation should be comment on the work criticised, and second that it should be "fair"—that is to say, that if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. "Good faith" requires not, indeed, logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment. The object of exception 6 to s. 499 of the Indian Penal Code (Act XLV. of 1860) is that the public should be aided by comment in its judgment of the public perfomance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an

Defamation (*contd.*)—

unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him: he is also bound in the words of the exceptions to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment. — EMPEROR *v.* ABDOOL WADOOD, I. L. R., 31 Bom. 293.

18. DEFAMATION — *Hindu widow — Complaint by brother—"Person aggrieved" —Jurisdiction—Criminal Procedure Code (Act V. of 1898) s. 198.*] Where the alleged offence was defamation imputing unchastity to a Hiudu widow: *Held*, that her brother, with whom she was residing at the time, was a "person aggrieved" by such imputation within the terms of s 198 of the Criminal Procedure Code, and it was competent to the Court to take cognizance of the offence upon his complaint.—THAKUR DAS SAR *v.* ADHAR CHANDRA MISSRI, I. L. R, 32 Cal. 425.

19. DEFAMATION — *Statements made by persons in the course of their evidence as witnesses in Court of Justice—Relevancy of statements to issue in case—Penal Code (Act XLV. of 1860), s. 500.*] Where certain statements alleged to be defamatory were made by certain persons in the course of their evidence as witnesses in a Court of Justice, and were relevant to the issue in the case under enquiry, *held* that such persons could not be prosecuted for defamation in respect of those statements.—WOOLFUN BIBI *v.* JESARAT SHEIKH, I. L. R. 27 Cal. 262.

Demolition of Building—

DEMOLITION OF BUILDING — *Calcutta Municipal Act (Beng. Act III. of 1890) ss. 18, 102 (1) (c), 391, 449—Sanction by District Building Surveyor of additions to contemplated building—Delegation of power by Chairman — Legality of sanction— Sanction of General Committee—Proceeding under s. 449 — Application thereunder to Magistrate, signed for the Chairman by the Secretary to the Corporation and the General Committee—Irregularity.*] An addition to a contemplated building sanctioned by a District Building Surveyor, to whom the power of sanction has been delegated by the

Demolition of Building (*contd.*)—

Chairman under s. 18 of the Calcutta Municipal Act, 1899, is a duly authorized erection, and the sanction of the General Committee under s. 391 is not necessary. S. 391 applies only to alterations of, and additions to, existing buildings. Where the General Committee approved of the suggestion of the Building Sub-Committee that certain additions to a building were unauthorized, and that an application should be made to the Magistrate under s. 449 of the Act, and directed the Chairman to make it, whereupon an application was made, purporting to come from the Chairman, but signed by the Secretary to the Corporation, who was also Secretary to the General Committee:—*Held*, that the irregularity, if any, was cured by s. 102 (1) (*c*) of the Act.—KISSORI LAL JAINI *v.* THE CORPORATION OF CALCUTTA, I. L. R. 37 Cal. 585.

Disobeying Public Servant.

DISOBEYING PUBLIC SERVANT—*Criminal Procedure Code (Act V. of 1898), s. 103 (1)—Party called upon to attend and witness a search.*] A person was called upon by an Abkari Inspector to attend a search held under s. 103 of the Code of Criminal Procedure, and did so. He, however, refused to sign the search list when it was prepared. On a charge being preferred against him under s. 187 of the Indian Penal Code of intentionally omitting to assist a public servant in the execution of his duty—*Held*, that the accused was not guilty of an offence under s. 187. Assuming that a person called upon to attend and witness a search under s. 103 of the Code of Criminal Procedure, is under a legal obligation to attend the search and sign the search list, the "assistance" which a person is bound by the earlier part of s. 187 of the Penal Code, to render, is *ejusdem generis* with the various forms of assistance referred to in the latter part of the section. It must have some direct personal relation to the execution of the duty by the public officer. The signing of the search list required by s. 103, is an independent duty which is imposed on the witness, whereas the word "assistance," as used in the section, implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself.—IN THE MATTER OF RAMAYA NAIKA, I. L. R., 26 Mad. 419.

Disposal of Property—

DISPOSAL OF PROPERTY—*Criminal Procedure Code, ss. 517, 523—Sections not applicable where there was no trial and no evidence recorded.*] When a person charged before the Magistrate with criminal breach of trust in respect of certain jewels, died be-

Disposal of Property (*contd.*)—

fore trial and before any evidence was recorded and the alleged owner of the jewels, which were recovered by the Police from the pledges and sent to the Magistrate along with the charge sheet, applied to be put in possession of them under ss 517, 523 of the Code of Criminal Procedure after enquiry as to their ownership: *Held* that s. 517 of the Code of Criminal Procedure did not apply to the case. *Held, further*, that as there was no evidence or finding about ownership, s. 523 of the Code of Criminal Procedure did not apply, and that the Magistrate was not bound to hold an inquiry simply to determine the ownership of the jewels.—IN THE MATTER OF KUPPAMMAL, I. L. R., 29 Mad. 375.

Dispute concerning easement—

DISPUTE CONCERNING EASEMENT—*Right of passage of surplus water through an ál—Jurisdiction of Magistrate to direct an opening in the ál to be made by a party, and, on failure, by the Police—Criminal Procedure Code (Act V. of 1898), s 147.*] The Magistrate has jurisdiction, under s. 147 of the Criminal Procedure Code, on being satisfied that a party has a right to have an opening in an *ál*, for the purpose of draining off the surplus water from his lands, and that he has exercised the right for several years, and also on the last occasion, when it was exercisable, to pass an order requiring the opposite party to make the opening within a reasonable time from its date, and on his failure to do so, directing the Police to make the same: *Dowlat Koer* v. *Siva Pershad Pandit* 12 Ind. Cas. 615, *Pasupati Nath Bose* v. *Nando Lal Bose* 5 C. W. N. 67, and *Lalit Chandra Neogi* v. *Tarini Pershad Gupta* 5 C. W. N. 335 followed. *Dilmir Parri* v. *Khodadad Khan*, (I. L. R., 36 Cal. 923), distinguished. *In re Lindsay*, I. L. R., 4 Mad. 121, not followed.—AMBICA PRASAD SINGH *v.* GUR SAHAY SINGH, I. L. R., 39 Cal. 560.

Dispute concerning land—

1. DISPUTE CONCERNING LAND—*Likelihood of breach of the peace—Jurisdiction of Magistrates—Criminal Procedure Code (Act V. 1898), ss. 107, 145.*] There is no conflict between ss. 107 and 145 of the Criminal Procedure Code. The fact that there is a dispute concerning land, likely to cause a breach of the peace, does not deprive a Magistrate of jurisdiction under s 107 of the Criminal Procedure Code, where he is informed that any person is likely to commit a breach of the peace or disturb public tranquility, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. Whether, after proceeding under s. 107 of

Dispute concerning land (*contd.*)—

the Criminal Procedure Code, it will be proper for a Magistrate to act under s 145 of the Code, must depend on the circumstances of each case as it arises, viz., whether likelihood of a breach of the peace continues or not. The competence of the Magistrate to proceed under s. 107 of the Code against persons not in possession must depend upon whether as against those persons the conditions specified in the section have been established.—EMPEROR *v.* ABBAS I L. R., 39 Cal. 150.

2. DISPUTE CONCERNING LAND—*Tenant interested in the subject of dispute—Addition of the tenant to the proceedings to show that there is no dispute likely to cause a breach of the peace—Criminal Procedure Code (Act V. of 1898), s. 145, cl. (5).*] A person claiming to be interested in the subject of dispute as a tenant, who was not required to attend as a party, should be heard under s. 145 (5). of the Criminal Procedure Code in order to show that no dispute likely to cause a breach of the peace exists. — HARAN MANDAL *v.* MOHIM CHANDRA PRAMANICK, I L. R., 37 Cal. 285.

3. DISPUTE CONCERNING LAND — *Joint-owners — Claim of exclusive possession to subject of dispute, by each party—Jurisdiction of Magistrate — Criminal Procedure Code (Act V. of 1898) s. 145.*] A dispute between two sets of joint-owners, each claiming exclusive possession of the land forming part of the joint estate, through their respective tenants, is within the scope of s. 145 of the Criminal Procedure Code. An order declaring the exclusive possession of a tenant of one party is not, therefore, without jurisdiction. *Makhan Lal Roy* v. *Barada Kanta Roy*, 11 C. W. N. 512, distinguished. — GURU DAS KUNDU CHOWDHRY *v.* KRDAR NATH KUNDU CHOWDHRY, I. L. R., 38 Cal. 889.

4. DISPUTE CONCERNING LAND — *Jurisdiction of Magistrate—Irregularities in procedure—Omission of personal and local notices—Filing of written statements—Ex parte order—No opportunity given to a party of adducing evidence.*] Where the Magistrate drew up a proceeding under s. 145, of the Criminal Procedure Code in the presence of the representatives of the parties and fixed a day for the hearing of the case, but there was no personal service of notices on the parties nor local publication thereof and neither party filed written statements, and the Magistrate, after taking the evidence of one witness on behalf of the second party, declared them to be entitled to possession:—*Held*, that the proceedings were extremely irregular and had prejudiced the first party, and that the irregularities

Dispute concerning land (*contd.*)—

were so great as to amount to a want of jurisdiction, such as would justify the interference of the High Court.—AHMED CHOWDHRY *v.* PARBATI CHARAN ROY, I. L. R., 35 Cal. 774.

5. DISPUTE CONCERNING LAND—*Attachment of subject of dispute—Order of Settlement Court in a proceeding between the some parties and relating to the attached lands—Effect of such order—Release of attachment by Magistrate—Criminal Procedure Code (Act V. of 1898) s. 146—Bengal Survey Act (Beng. Act V. of 1875) s. 41.*] An order of the Survey and Settlement Courts, under the Bengal Survey Act, 1875 section 41, is a determination by a competent Court of the rights of the parties entitled to possession of the land within the meaning of section 146 of the Criminal Procedure Code. Where the Magistrate attached certain lands under s. 146 of the Code, and in a proceeding under section 41 of the Bengal Survey Act, 1875, between the same parties, the same lands were found to be in the possession of the petitioner:—*Held*, that the Magistrate was bound to follow such order and to release the lands from attachment.—AMULEE *v.* SAMI AHMED I. L. R., 37 Cal. 381.

6. DISPUTE CONCERNING LAND — *Witnesses—Failure of witnesses summoned to attend—Duty of Magistrate to summon or compel the attendance of witnesses at the instance of the parties—Denial of justice—Interference by High Court—Criminal Procedure (Act V. of 1898), s. 145(4).*] Section 145 of the Criminal Procedure Code does not render it obligatory on the Magistrate to summon witnesses at the instance of the parties, or to compel their attendance after they have been summoned but failed to appear. *Tarapada Biswas* v. *Nurul Huq* (I. L. R., 32 Cal. 1093), followed Where a Magistrate has acted in accordance with law, it would be necessary to show the High Court very clearly, in order to warrant its interference, that the procedure adopted, though right in law, has in fact amounted to an absolute denial of justice. Where it did not appear, what evidence the absent witnesses would be able to give regarding the question of actual possession, and there was nothing to show what efforts the party had made to procure their attendance, the High Court refused to interfere — HARENDRA KUMAR BOSE *v.* GIRISH CHANDRA MITRA, I. L. R., 38 Cal. 24.

Disqualifying Interest—

DISQUALIFYING INTEREST—*Criminal Procedure Code (Act V. of 1898), s. 556—Police Act (V. of 1861), s. 29—Trial by District Magistrate for breach of orders of a reserve Inspector of Police—Magistrate not "personally interested."*] *Held* that the Magistrate of a district was not, on account of his being the head of the police of the district, debarred, by reason of s. 556 of the Criminal Procedure Code (Act V. of 1898), from trying a person accused under s 29 of the Police Act, 1861, of a breach of the orders of a reserve Inspector of Police.—QUEEN-EMPRESS *v.* NARAIN SINGH, I. L. R., 22 All 340.

Disqualification of Magistrate—

1. DISQUALIFICATION OF MAGISTRATE—*Criminal Procedure Code (Act V of 1898), ss. 144, 487—Order to "abstain from a certain act"—Trial by Magistrate who made the order of persons alleged to have disobeyed it.*] On a petition being filed in the Court of a Sub-Divisional First-class Magistrate setting out that a breach of the peace was likely to arise from the simultaneous use of a certain mosque by members of the Hanifi and Shafi sects, the Magistrate passed an order addressed to ten members, who were named, and several others of the Hanifi sect, and to three members, who were named, and several others of the Shafi sect. The order concluded as follows: "I do order hereby that the following order should be observed in regard to the entry of the said mosque by any of you or any other Mussalmans of the Hanifi and Shafi sects for a period of two months from this date unless in the meanwhile you establish your right in a Court of competent civil jurisdiction." It set out five periods of half an hour each during which each sect, respectively, might enter the mosque on ordinary days, and two periods of one hour each in which each sect might enter the mosque on other days. *Held* that the order was within the powers conferred by s. 144 of the Criminal Procedure Code Certain members of the Hanifi sect having entered the mosque in disobedience to the order hereinbefore referred to, they were charged under s. 188 of the Indian Penal Code with disobedience to an order by a public servant. The case was tried by the Magistrate who had passed the order. *Held*, that the Magistrate was not competent to try the case, inasmuch as he had made the order under s. 144.—QUEEN-EMPRESS *v.* ABDULLA SAHEB, I. L. R., 24 Mad. 262.

2. DISQUALIFICATION OF MAGISTRATE—*Criminal Procedure Code (Act V. of 1898), s. 556—Disqualification of Magistrate to try a case—Directing the prosecution of an accused—Subsequent trial by same Magistrate—Legality of trial.*] A Deputy Tahsildar, made a report concerning A to

Disqualification of Magistrate (*ctd.*)—

the Tahsildar, who, in turn, reported the matter to the Deputy Magistrate. The latter authorized the Tahsildar to prosecute A, on such charges as might be capable of being proved in a Criminal Court, and a prosecution was accordingly instituted. The case was tried by the same Deputy Magistrate, and on the objection being raised that under s 556 of the Code of Criminal Procedure that Magistrate was disqualified from trying the accused. *Held* that he was not disqualified. The act of the Deputy Magistrate was an authorization and not a direction that the accused should be prosecuted. *Girish Chunder Ghose* v. *The Queen-Empress* I. L. R., 20 Cal. 857. *In the Matter of the Petition of Ganeshi* (I. L. R., 15 All. 192) and *Queen-Empress* v. *Narain Singh* (I. L. R., 22 All. 340), referred to.—QUEEN-EMPRESS *v.* CHENCHI REDDI, I. L. R., 23 All. 238.

District Magistrate, Civil and Military Station, Bangalore—

DISTRICT MAGISTRATE, CIVIL AND MILITARY STATION, BANGALORE—*Power of, to try European British subjects.*] Proviso 4 to Notification 1688 I. A., Government of India dated 4th October 1898, does not deprive the District Magistrate for the Civil and Military Station of Bangalore of jurisdiction to take cognizance of offences committed by European British subjects with the station —THE PUBLIC PROSECUTOR, BANGALORE *v.* PRIVATE J. MARCHANT, 34 Mad 346.

District Municipal Act—

1. DISTRICT MUNICIPAL ACT (BOM. ACT III. OF 1901)—*ss. 3 (7), 96—Notice of new buildings—Reconstructing side wall of a house on its old foundation not necessarily new building—Building, interpretation of.*] The accused owned a house, one of the side walls of which had fallen down. He rebuilt it on its old foundation, without having previously obtained premission of the Municipality. He was thereupon charged, under s. 96 of the Bombay District Municipal Act (Bom. Act III. of 1901), for having erected a building without permission of the Municipality: *Held*, that the accused committed no offence under s. 96, for it could not be said as a matter of law that the material re-construction of a small wall must constitute the "erection of a building." *Emperor* v. *Kalekhan Sardarkhan*, 35 Bom. 236, distinguished. *Per Curiam.*—It is recognized in England to be a rule with regard to the effect of interpretation-clauses of a comprehensive nature that they are not to be taken as strictly defining what the meaning of a word must

District Municipal Act (*contd.*)—

be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should. *The Queen* v. *The Justices of Cambridgeshire* 7 Ad. & E. 480, *Meux* v. *Jacobs* L. R. 7 H. L. 481 and *Mayor &c., of Portsmouth* v. *Smith* 10 App. Cas. 364, followed.—EMPEROR *v.* B. H. DESOUZA, I. L. R., 35 Bom. 412.

2. DISTRICT MUNICIPAL ACT (BOM. ACT III. OF 1901), *ss. 96—Municipality—Permission of the Municipality—Building a wall which had fallen down—Absence of permission — Material reconstruction — Erecting a building.*] The accused applied to the Municipality on the 19th April 1910 for leave to reconstruct a wall of his house which had fallen down. Under sub-s. 4 of s. 96 of the Bombay Municipal Act (Bombay Act III. of 1901) the Municipality had one month within which to make known their decision; and on the 13th May they issued an order to the accused prohibiting him from making the reconstruction. In the meanwhile, on the 11th May, the accused reconstructed the wall. He was, therefore, prosecuted under s. 96 of the Act for having reconstructed the wall without the permission of the Municipality, but the Magistrate relying on the case of *Queen-Empress* v. *Tippana*, Ratanlal's Un. Cri. Cas., p. 402, acquitted him. On appeal:—*Held*, reversing the order of acquittal, that the accused had erected a building within the meaning of s. 96 of the Bombay District Municipal Act, 1901, since the rebuilding of the whole wall which had fallen down was a material reconstruction or an erection of a building as defined in the explanation to the section. *Queen-Empress* v. *Tippana*, Ratanlal's Un. Cri. Cas., p. 402 is not an authority under the new Act.—EMPEROR *v.* KALEKHAN SARDARKHAN, 35 Bom. 236.

Disturbing Religious Assembly—

1. DISTURBING RELIGIOUS ASSEMBLY—*Indian Penal Code—(Act XLV. of 1860), ss. 153, 296—Wantonly giving Provocation with intent to cause riot—Religious proceession on highway—Legality—Chanting hymns by ordinary worshippers.*] By a decree in a civil suit, the Tengalai sect in a certain district were declared entitled to hold certain offices connected with a temple, and as such office-holders it was their duty to recite certain hymns in processions. The rights of the Vadagalai sect as ordinary worshippers were not affected by the decree, but the Vadagalais were ordered not to interfere with the

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Tengalais in the recital of the hymns otherwise than as ordinary worshippers. Subsequently to this decree, a religious procession was being conducted along a public highway. The Tengalais walked in front, chanting the hymns. In the rear, at such a distance that the Tengalais were not likely to hear them, the Vadagalais followed, also chanting hymns. A complaint was in consequence laid by a member of the Tengalai sect, charging the Vadagalais (1) with wantonly giving provocation with intent to cause riot and (2) with voluntarily disturbing an assembly lawfully engaged in religious worship:—*Held*, that neither offence had been committed. *Per* DAVIES, *J.* (without deciding whether religious processions in public streets in India are "lawful" or not). The Vadagalais had not exceeded their rights as ordinary worshippers and had not intended to provoke a breach of the peace, and were consequently not guilty of an offence under s. 153. Moreover, no "disturbance" had been proved within the meaning of s. 296. *Per* SUBRAHMANIA AYYAR, *J.*—The object of s. 296 of the Indian Penal Code presumably is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively; and not when they engage in worship in an unquiet place open to all the public as a thoroughfare. The user of a highway for religious worship is altogether wanting in lawfulness. There is no peculiar right known to the law as a right of procession. Though the law accords to members of a procession no recognition in their collective capacity, yet the fact that a number of persons use a highway together for some common purpose does not detract in any way from such use being lawful; but as the circumstances attending a procession may, in consequence of their being inconsistent with the paramount idea of passage, be of such a character as to render the user by the processionists otherwise than lawful and as carrying on worship on a highway is of that character, it cannot be affirmed that the Tengalais on the occasion in question constituted an assembly engaged in worship lawfully within the meaning of s. 296 of the Indian Penal Code. *Per* BENSON, *J.*—The contention that the Tengalais were not "lawfully" engaged in religious worship because they were engaged in it on a highway, could not be accepted. There is nothing illegal, in India (where highways have from time immemorial been used for the passing of religious

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processions), in a procession or assembly engaging in worship while passing along a highway. If it were necessary to refer the origin of the use of highways for religious processions to a dedication of the highway to such use, such a dedication could reasonably be presumed, history, literature and tradition showing that such processions have formed a feature of the national life from the earliest times, and it being unreasonable to suppose that a dedicator would make a reservation against religious processions, which would be wholly opposed to the sentiment of the community. A religious procession is entitled to the special protection given by the Penal Code to assemblies engaged in religious worship. In the present case, however, no "disturbance" had been proved, and consequently no offence had been committed. *Per* BHASHYAM AYYANGAR, *J.* (at the first hearing the Chief Justice dissenting).—Inasmuch as the Vadagalais had acted as ordinary worshippers, which they were not prohibited from doing under the decree, the act complained of was not illegal within the meaning of ss. 153 and 43 of the Indian Penal Code With regard to the charge under s. 296, the accused had not been shown, on the facts as found, to have voluntarily caused disturbance to an assembly lawfully engaged in the performance of religious worship. No assembly can be so "lawfully engaged" (within the meaning of that section), on a highway, unless it be established or can be reasonably presumed that the dedication of the highway was subject to such user. User of a highway as a place of worship is not the legitimate user of it as a highway. The conviction was wrong on this ground and on the ground that in fact no disturbance had been proved.—VIJIARAGHAVA CHARIAR *v.* EMPEROR, I. L. R., 26 Mad. 554.

Division of Crops—

DIVISION OF CROPS, ORDER FOR—*Jurisdiction of Magistrate—Criminal Procedure Code* (*Act V. of 1898*) *s. 144—Irrevocable order.*] An order for Division of crops between the tenants and a rival zemindar does not come within the purview of s. 144 of the Criminal Procedure Code; nor is a Magistrate empowered to make an order of an irrevocable nature under that section.—UMATAL FATIMA *v.* NEMAI CHARAN BANERJEE, I. L. R., 33 Cal. 154.

Dying Declaration—

DYING DECLARATION — *Admissibility of petition of complaint and examination of complainant on oath as dying declaration—Record and mode of proof of such statements—Evidence Act (I. of 1872), ss. 32, cl. (1), and 91—Criminal Procedure Code (Act V. of 1898), s. 200—Assault by several but fatal blow by some one of them—Liability of each accused—Penal Code (Act XLV. of 1860), ss. 34, 326.*] A petition of complaint and the examination of the complainant on oath under s. 200 of the Criminal Procedure Code are admissible as dying declarations under s. 32, cl. (1), of the Evidence Act, and are not, as such, matters required by law to be reduced to the form of a document within s. 91 of the Evidence Act so as to exclude parole evidence of their terms. The statements admissible in evidence, when made in the absence of the accused, is the oral statement of the deceased, and not the record of it; and such oral statement must be proved by the person who recorded it or heard it made. *Empress* v. *Samiruddin* I. L. R. 8 Cal. 211, and *King-Emperor* v *Mathura Thakur*, (6 C. W. N. 72), followed. Where several accused persons struck the deceased several blows, one of which only was fatal, and it was not found who struck the fatal blow, it was *held* that, in the circumstances, it could not be said that those who did not strike the fatal blow contemplated the likelihood of such a blow being struck by the others in prosecution of the common object, and that they were all guilty under s. 326, and not under s 302, of the Penal Code.—GOURIDAS NAMASUDRA *v.* EMPEROR, I. L. R., 36 Cal. 659.

E.

Embankment—

1. EMBANKMENT — *Bengal Embankment (Act II of 1882) s. 76, cls. (a), (b)—"Addition to existing embankment," meaning of—Increasing height of embankment—Essentials of offence under s. 76 (b)*] The words "existing embankment" in s. 76 b) of Bengal Act II. of 1882 mean an embankment existing at the time the addition is made. *Ajodhya Nath Koila* v *Raj Kristo Bhar*, (I L. R., 30 Cal. 481), followed. *Goverdhan Sinha* v. *Queen-Empress*, I. L. R., 11 Cal. 570, explained as overruled. The only offence constituted by cl. (b), as distinguished from cl. (a) of s. 76 is the omission to obtain the sanction of the Collector to the addition to an existing embankment within a prohibited area, irrespective of the question whether such act is likely to interfere with, counteract, or impede any public embankment and public water course.—RAMNATH PANDIT *v.* EMPEROR, I. L. R., 38 Cal. 413.

Embankment—(*contd.*)

2. EMBANKMENT — *Addition to Embankment—"Shall add to"—Bengal Embankment Act (Bengal Act II. of 1882), ss. 76, cl. (a), 79*] The words "shall add to any existing embankments" in s. 76 cl. (a) of Bengal Act II. of 1882, include an addition to the height of an embankment. *Goverdhan Sinha* v. *The Queen-Empress*, (I. L. R., 11 Cal 570, overruled.—AJODHYA NATHKOILA *v.* RAJ KRISTO BHAR, I. L. R., 30 Cal. 481.

Emigration—

EMIGRATION — *Unlawful recruitment—Assam Labour and Emigration Act (VI of 1901) s. 164—Locus delicti—Jurisdiction of Criminal Court—Criminal Procedure Code (Act V of 1898) s 177.*] A recruiter, who induces a person at Cawnpore to go to Fiji, but on the way takes him to a cooly depôt at Arrah and induces him to proceed to Sylhet, in contravention of the Assam Labour and Emigration Act, commits no offence under s. 164 of Act VI. of 1901 at Cawnpore, but only at Arrah, and a Magistrate of the latter place has jurisdiction to try such offence.—FAIZ ALI *v.* EMPEROR, I. L. R., 37 Cal. 27.

Emigration Act (XXI. of 1883)—

EMIGRATION (*Act XXI. of 1883*),—*ss. 6, 107, 111— Magistrate — Magistrate, First Class, in s. 111, includes Presidency Magistrate—Agreement with Native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants—Liability of master for criminal acts done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of s. 111—Protector of Emigrants has power to impose reasonable terms before he can issue permission applied for—Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure—Criminal Procedure Code (Act V. of 1898), s. 537.*] The term "Magistrate of the First Class" used in s 111 of the Indian Emigration Act, 1883, means a Magistrate appointed to exercise the highest Magisterial powers ordinarily prescribed by the Criminal Procedure Code within his jurisdiction and includes a Presidency Magistrate. Where on an information a summons is issued to the accused, and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons, is not sufficient, under s. 537 of

Emigration Act (XXI. of 1883) *(contd.)*

the Criminal Procedure Code to upset the finding and sentence unless it has in *fact* occasioned "a failure of justice,' that is, unless it has unfairly affected the accused's defence on the merits. Sub-s. (*1*) of s. 111 of the Indian Emigration Act hits at not merely entering into an agreement but also at any attempt to enter into it. An attempt consists in some external act which shows that progress is made in the direction of it or towards maturing and effecting it, that is, something tangible and ostensible of which the law can take hold, which can be alleged and proved. Where penal statute has been infringed by servants and criminal proceedings are taken against the master, although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed, not merely with reference to its language, but also its subject-matter and object. Sub-s. (*1*) of s. 111 of the Indian Emigration Act, 1883, does not break in upon the rule of law embodied in the maxim *qui per alium facit per seipsum facere videtur*. The word "whoever" in the clause means whoever either by himself or through his agent. In other words the Act leaves untouched the right of every person to enter into such agreements through an agent. It merely provides that such agreements shall not be entered into without the previous permission of the Local Government. The intention of the section is to hold the master liable for his servant's act, provided the act was done by the servant so as to bind the master according to the law of contract. The coupling of the word "conditions" with the word "terms" in s. 107 of the Act shows the intention of the Legislature to be that the officer authorized to grant the permission should have power to impose any reasonable terms and conditions he thinks proper as conditions precedent to the grant, whether they relate to the terms of the agreement itself or being extraneous to it relate to the execution or other considerations which have to be taken into account in order to protect the interests of the Native of India departing out of it by sea. S. 29 of the Indian Emigration Act, 1883, makes it compulsory that the execution of the agreement therein referred to should be in the presence of the Protector. In s 108 of the Act the power conferred on the Local Government, who have delegated their power to the Protector, is discretionary, and it is left to that Government to decide whether in any particular case any agreement referred to in s. 107 shall be executed or not in its presence, that is, in the presence of the Protector acting as its delegated authority. The two sections being thus distinguishable, the language of one cannot be invoked to aid the construction of the other, especially where the language of each is plain.—EMPEROR *v.* JEEVANJEE, I. L. R., 31 Bom. 611.

Emigration Act XXI. of 1883) *(contd.)*

2. EMIGRATION — (*Act XXI. of 1883*) *s. 107—Servant offending under the Act in the course of his master's employment for his master's benefit — Master's liability—Artizan—Engine driver on board a steamer.*] If a servant having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business every thing which he does within the scope of his employment for that purpose will be binding upon the master and the master will be criminally liable for such act of the servant under the Indian Emigration Act (XXI. of 1883). In such a case the master's express knowledge of or consent to the act is not necessary, because by the very fact of the appointment of the servant as an agent in such a business, the master's knowledge of or consent to every act done by the servant or agent within the scope of his employment is implied by law. A person engaged to drive an engine on board a steamer is an artizan within the meaning of the term as used in s. 107 of the Indian Emigration Act 1883.—EMPEROR *v.* HAJI SHAIK MAHOMED, I. L. R., 32 Bom. 10.

Encroachment—

1. ENCROACHMENT—*Projection—"Fixture"—Obstruction on public street—Calcutta Municipal Act (Bengal Act III. of 1899) ss. 3 sub-s. (37), 286, 336, 341.*] A verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain which runs between the street and the front of the house, is a "fixture" and 'a projection, encroachment, or obstruction over or on a public street" within the meaning of s. 341 of the Calcutta Municipal Act.—CORPORATION OF CALCUTTA *v.* IMADUL HUQ, I. L. R., 34 Cal. 844.

2. ENCROACHMENT—*Bengal Local Self-government Act (Bengal Act III. of 1885) s. 140—Infringement of bye-law—Erection of fence on the slope and edge of a road without impeading the passage along it—Continuing Offence - Daily Fine.*] Where a bye-law passed by the District Board prohibited encroachment on any part of a road maintained by it, or its slopes or side-ditches, by the placing of fences thereon : *Held*, that the erection of a fence along the slope and the edge of such road, withont impeading the passage over it, is an infringement

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of the bye-law; though the Board has no proprietary right in the road, or in the land on which its slopes or side-ditches stand. A sentence of a daily fine in anticipation, in the case of a continuing offence which may be committed after the date of the proceeding in which it was passed, is illegal.—NILMANI GHATAK *v.* EMPEROR, I. L. R., 37 Cal. 671.

Enhancement of Sentence—

1. ENHANCEMENT OF SENTENCE—*Criminal Procedure Code, s. 423—Order directing payments of costs not an enhancement of sentence—Court Fees Act (VII. of 1870.)*] An order under s. 31 of the Court Fees Act directing the accused, on appeal against conviction, to pay the costs of the complainant is not an enhancement of the sentence. *Madan Mandal* v. *Haran Ghose*, (I. L. R., 20 Cal. 687), approved. *Queen-Empress* v. *Tangavelu Chetty*, (I. L. R., 22 Mad. 153), dissented from.—EMPEROR *v.* KARUPPANA PILLAI, I. L. R., 29 Mad. 188.

2. ENHANCEMENT OF SENTENCE—*Criminal Procedure Code, s. 423 (1) (b) (2)—Alteration of sentence of imprisonment into Fine—Revisional powers.*] When the aggregate period of imprisonment which the accused may have to undergo is to any extent diminished, the fact that a fine is imposed by the appellate Court would not in law be an enhancement of the sentence. In a case where such an alteration of the sentence has the effect of rendering it in the circumstances of the case excessive or inappropriate, the interference in revision by a superior Court may be called for. A sentence of imprisonment for one month was altered by the Appellate Court to one for 5 days and a fine of Rs. 40 with imprisonment in default for one week. *Held* that such alteration of sentence is not illegal.—BAKTAVATSALU NAIDU *v.* KING-EMPEROR, 16 M. L. J. 560.

3. ENHANCEMENT OF SENTENCE—*Criminal Procedure Code, s. 438—Revision—Practice—Sentence reduced by Sessions Judge.*] As a general rule of practice, the High Court will not entertain a reference from a District Magistrate which has for its object the enhancement of a sentence which has been reduced by the Sessions Judge. *Queen-Empress* v. *Shere Singh* (I. L. R., 9 All. 362); *Queen-Empress* v. *Zor Singh*, (I. L. R., 10 All. 146) and *Queen-Empress* v. *Jahandi*, (I. L. R., 23 Cal. 249) referred to.—EMPEROR *v.* JUMNA BAI, I. L. R., 28 All. 91.

Escape from Lawful Custody—

ESCAPE FROM LAWFUL CUSTODY—*Penal Code (Act XLV. of 1860), ss. 224, 411—Actual thief arrested by private person whilst in possession of stolen property—s.*

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411 of the Indian Penal Code not applicable to the thief himself.] S. 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person whose bullock had been stolen in his absence traced it to the house of the thief, and there and then arrested him, and made him over to a chaukidar, from whose custody he escaped, it was *held* that this was not an escape from lawful custody within the meaning of s 224 of the Code. *Semble* that if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the chaukidar would have been a lawful custody. *Queen-Empress* v. *Potadu* (I. L. R., 11 Mad. 480) referred to.—KING-EMPEROR *v.* JOHRI, I. L. R., 23 All. 266.

See ARREST.

European British Subject—

1 EUROPEAN BRITISH SUBJECT—*Criminal Procedure Code (Act V. of 1898) s. 451 (1)—Right of European British Subject to be tried by a Jury—Such right claimable at any time before accused has entered upon his defence notwithstanding previous waiver.*] One Sullivan was sent for trial to the District Magistrate of Meerut, the offence alleged against him being one under s. 354 of the Indian Penal Code *i.e.*, Warrant-case. At the outset of the proceedings the accused was asked whether he wished to be tried by a Jury, and replied in the negative. A charge was framed against the accused, and at his request certain witnesses who had been examined for the prosecution were ordered to be recalled for cross-examination. After the charge was framed, but before the accused had entered upon his defence, an application for a Jury was presented on behalf of the accused. The Magistrate disallowed this application. *Held*, that the fact that the accused, before the trial had begun, had stated that he did not wish for a Jury, did not prevent him from afterwards claiming a Jury within the time allowed by s. 451 (1) of the Code of Criminal Procedure, and that the Magistrate was wrong in disallowiug the application.—EMPEROR *v.* C. J. SULLIVAN, I. L. R., 24 All. 511.

2. EUROPEAN BRITISH SUBJECT—*Criminal Proceeding against—Competency of native mofussil Magistrate to hold an inquiry against a European British snbject under s. 107 of the Criminal Procedure Code (Act V. of 1898)—Applicability of s. 443 of the Code to such inquiry.*] The provisions of s. 443 of the Criminal Procedure Code apply to an inquiry held under s. 107 thereof. The party against

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whom such an inquiry is instituted is in the position of an accused. *Queen-Empress* v. *Mutasaddi Lal*, I. L. R., 21 All. 107, *Queen-Empress* v. *Mona Puna*, (I. L. R., 16 Bom. 661 and *Jhoja Singh* v. *Queen-Empress*, (I. L. R., 23 Cal. 493) referred to.—HOPCROFT *v.* EMPEROR, I. L. R., 36 Cal. 163.

Evidence—

1. EVIDENCE—*Evidence of bad character—Belonging to a gang of persons associated for the purpose of habitually committing theft—Penal Code (Act XLV. of 1860), s. 401—Evidence Act (I. of 1872), ss. 14, 54, as amended by Act III. of 1891.*] The character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft, punishable under s. 401 of the Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence. Where it was proved that certain persons were found together at some distance from their houses, that they were all intimately connected with one another, and were in the habit of visiting *melas* together, that one of them was arrested in the act of picking a pocket and that when they were arrested many of them gave false names and false addresses: *Held* they could not be convicted under s. 401 of the Penal Code, there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft.—MANKURA PASI *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 139.

2. EVIDENCE—*Petition — Compromise — Criminal proceedings—Value of such deed—Admissibility in evidence of such document in a later case.*] An unregistered compromise petition, which was the root of the plaintiff's claim to an increased rent and was filed in previous criminal proceedings, was not incorporated in the order in such proceedings. *Held*, it was not admissible in evidence in a later civil suit. *Pranal Anni* v. *Lakhsmi Anni*, I. L. R., 22 Mad. 508; L. R. 26 I. A. 101; *Kali Charan Ghosal* v. *Ram Chandra Mandal*, I. L. R., 30 Cal. 783 and *Birbhadra Rath* v. *Kalpataru Panda*, (I. C. L. J. 388), referred to.—BIRAJ MOHINEE DASSEE *v.* KEDAR NATH KARMAKAR, I. L. R., 35 Cal. 1010.

3. EVIDENCE—*Depositions—Admissibility—Presumption—Indian Merchant Shipping Act (V. of 1883)—Preliminary enquiry—Statements not challenged.*] In the course of a preliminary enquiry, held under the Indian Merchant Shipping Act of 1883, to investigate into a collision, the defendant Company being represented by their

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attorney, certain officers of the defendant Company made certain statements on oath. *Held*, that the failure of the attorney of the defendant Company to challenge the accuracy of these statements afforded a strong presumption that the imputations against the defendant Company therein contained were correct, and on this ground among others, the statements were admissible in evidence. *Simpson* v. *Robinson*, 12 Q. B. 511, *R* v. *Coyle*, 7 Cox C. C. 76, *Morgan* v. *Evans*, 3 Cl Fin. 159, *Freeman* v. *Cox*, L. R. 8 Ch. D. 148, *Hampden* v. *Wallis*, L. R. 27 Ch. D. 251, and *Sookram Misser* v. *Crowdy*, 19 W. R. 283, referred to.—ASIATIC STEAM NAVIGATION COMPANY *v.* BENGAL COAL COMPANY, I. L. R., 35 Cal. 751.

4. EVIDENCE—*Criminal Procedure Code (Act V. of 1898), s. 362—Recording of evidence by a Presidency Magistrate.*] A Presidency Magistrate is bound to record evidence only in cases coming under s. 302 of the Criminal Procedure Code. He is not bound to record evidence in any summons cases or warrant cases, or cases in which enquiries have to be made as in summons cases, or warrant cases except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. It is however desirable that he should keep some record of the statements made by witnesses or that his judgment should indicate what those statements are, so that the High Court as a Court of revision may judge of the propriety or legality of the order passed by him. *Scheim* v. *Queen-Empress* (I. L. R., 16 Cal. 199), referred to.—SHAIK BABU *v.* EMPEROR, I L. R., 33 Cal. 1036.

5. EVIDENCE—IRREGULARITY IN TAKING UNDER S. 360, CRIMINAL PROCEDURE CODE (ACT V. OF 1898)—*Perjury—Prosecution of witness for, on deposition irregularly taken—Effect of irregularity.*] Where a deposition has been read over to a witness in Court and has been admitted by him to be correct in the presence of the Judge, the fact that another witness was being examined at the time is no defence to a prosecution of the deponent for giving false evidence in the deposition so read over. *Kamatchinathan Chetty* v. *Emperor*, (I. L. R., 28 Mad. 308) commented on. Though a deposition so recorded might invalidate the conviction of the accused in the case in which the deposition was so recorded, the deponent having admitted its correctness may be properly convicted of perjury thereon. *Singiri Eradu* v. *Empress*, Crl. R. C. No. 453 of 1894 (unreported), (II Weir's Crl. Rul., 435), dis-

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tinguished —BOGRA *v.* EMPEROR, I. L. R., 34 Mad. 141.

6. EVIDENCE — *Evidence in Criminal case—Criminal Procedure Code (Act V. of 1898), ss. 161, 164, 288, 307—Impropriety of taking down statements of persons immediately before their arrest—Impropriety of recording statements of witnesses with a view to fix them to those statements—Confession retracted — Evidence of witnesses retracted—Corroboration—Deposition before committing Magistrate read under s. 288, Criminal Procedure Code.*] Where there is evidence in the hands of a police-officer upon which he is bound to arrest a person, it is improper for him to obtain a statement from that person professedly under s 161 of the Criminal Procedure Code (Act V. of 1898), and reduce it to writing; and by virtue of s. 25 of the Evidence Act such statement is inadmissible in evidence. It is also improper for a police officer to send a person practically under custody, who is in the position of a witness, to have his statement recorded by a Magistrate under s. 164 of the Criminal Procedure Code (Act V. of 1898), with the view of fixing him to that statement at the time when judicial proceedings are subsequently taken. The voluntary character of such a statement cannot but be doubted, and when retracted in the Court of Session, the Judge should not bring the statement on to the record under s. 288 of the Criminal Procedure Code (Act V. of 1898) without making proper inquiry. It is not safe to convict an accused person on his retracted confession standing by itself uncorroborated, or on the statements of witnesses brought in under s 288 of the Criminal Procedure Code without independent corroborating testimony; nor can these two be joined together and held as mutually coroborating each other so as to justify a conviction based on them. *Queen* v. *Amanulla* (12 B. L. R. Ap. 15; 21 W. R. Cr 49), *Queen-Empress* v. *Rangi* (I. L. R., 10 Mad. 295), and *Queen-Empress* v. *Bharmappa* (I. L. R., 12 Mad. 123), referred to and approved of.—QUEEN-EMPRESS *v* JADUB DAS, I. L. R., 27 Cal. 295.

Evidence Act (I. of 1872)—

1. EVIDENCE ACT (I. OF 1872) SS. 14, 15 —*Act XLV. of 1860 (Indian Penal Code), s. 415—Cheating—Evidence to show instances of cheating other than those charged inadmissible.*] A person employed as a clerk in charge of the renewal of licences for hand-carts received Rs 2 for each such renewal, whereas he ought to have taken Rs 1-14. He was charged with cheating, and evidence was produced showing that he had taken 2 annas in excess from persons other than those named in the charge. *Held* that such evidence was inadmissible either under s 14, or under s. 15 of the Evidence Act. *Emperor* v. *Debendra Prosad*, (I. L. R., 36 Cal. 573) distinguished. *Empress* v. *M. J. Vyapoory Moodeliar*, (I. L. R., 6 Cal. 655,) referred to —EMPEROR *v.* ABDUL WAHID KHAN, I. L. R., 34 All. 93.

Evidence Act (I. of 1872) (*contd.*)—

2. EVIDENCE ACT (I. OF 1872), S. 21, 157—*Criminal Procedure Code (Act V. of 1898), s. 162, 288—Evidence—Admissibility of evidence—Statements made by witness to Police and Panch—Statements made by the witness as accused before Committing Magistrate—Witness deposing to different story before Sessions Court—Corroboration of the deposition before the Committing Magistrate by statements made before the Police and the Panch—Investigating Police Officer—Deposition of, as to statements made by witnesses to him—Examination-in-chief — Practice and procedure.*] During the trial of an accused person, the Sessions Judge admitted into evidence and used against the accused the following statements: (1) statements made by a witness to the Police implicating the accused, (2) the same witness's statement to the Panch, (3) and his statement as an accused person made before a Magistrate and (4) statements made by the co-accused to the Police. The witness, when he was examined before the Committing Magistrate, gave a consistent story; but he deposed to quite a different version when he was examined in the Sessions Court. The learned Judge disbelieved the changed story, and he used the witness's statements to the Police and his statements as an accused person and his statements to the Panch, by way of corroboration of what the witness had stated to the Committing Magistrate. The accused was convicted and sentenced. On appeal: —*Held*, (1) that it was an error to admit statements Nos. 1 and 2 for the purpose of corroborating statements No. 3, for only the statements of witnesses made to the trying Court can be corroborated in the manner contemplated by s. 157 of the Indian Evidence Act, 1872. Previous statements might be used to corroborate or contradict statements made at the trial; not to corroborate statements made prior to the trial. (2) That statements No. 2 were altogether inadmissible as evidence of the accused's guilt, for they could at most be regarded as admissions by the co-accused which could possibly be used against himself, but could not be proved and used against the accused. The Investigating Police Officer ought not to be allowed to depose in examination-in chief to what the witnesses stated to him. It

Evidence Act (I. of 1872) (*contd.*)—

opens up an undesirably wide field for cross-examination and leads to the attention of the Court being diverted and distracted from tbe true issues. Moreover it is contrary to the plain intention of s. 162 of the Code of Criminal Procedure, which is that such statements should be used, if at all, on behalf of and not against the person under trial.—EMPEROR *v.* AKBAR BADOO, I. L. R., 31 Bom. 599.

3 EVIDENCE ACT (I. OF 1872), SS. 24, 167—*Criminal Procedure Code (Act V. of 1898), s 162—Bombay City Police Act (IV. of 1902), s 63—Amended Letters Patent, 1865, cl. 26—Statement made by a witness to and taken down in writing by a Police officer—Admissibility in evidence—Confession of accused, admissibility of.*] One P., an entry clerk in the General Post Office, Bombay, was charged with having committed theft in respect of a registered letter. S, a friend of the accused, had made a statement to a Police officer which the latter had taken down in writing. At the trial S. denied having made the statement whereupon the Presiding Judge admitted the statement in evidence both to discredit S. and also as evidence against P. in that it contained statements made to the Police corroborating confessions made by P. These confessions were also used in evidence against P. On the application by P.'s Counsel the Advocate General certified under cl. 26 of the Amended Letters Patent that the said document was wrongly admitted. On a review of the Full Bench.—*Held*, having regard to s. 162 of the Criminal Procedure Code (Act V. of 1898), the said document ought not to have been admitted or used in evidence against the accused. The further question was raised by Counsel for the accused whether the confessions of the accused were irrelevant under s. 24 of the Indian Evidence Act (I. of 1872). *Held*, the confessions were rightly admitted in evidence. *Per* BATTY, *J.*:—It is not sufficient to render a confession irrelevant under s. 24 that there may have been added to it a statement which has been improperly induced by threat or promise. In order to make a confession irrelevant it must be shown that the confession itself was improperly induced. *Per* DAVAR, *J.*:—In the absence of the point being reserved or certified by the Advocate General the Full Bench has no right to sit in appeal on the decision that the confession was legally admissible in evidence.—EMPEROR *v.* NARAYAN RAGHUNATH PATKI, I. L. R., 32 Bom. 111.

Evidence Act (I. of 1872) (*contd.*)—

4. EVIDENCE ACT (I. OF 1872) SS. 25 AND 114, ILLUSTRATION (*b*), 133 AND 157—*Accomplice, corroboration of—Material particulars, what are—Admissibility of previous statements of accomplice to Inspector of Police—S. 157, "authority legally competent to investigate the fact," meaning of—Competency of officer of Criminal Investigation Department Criminal Procedure Code (Act V. of 1898), ss 162, 154, 155, 157 and 551—Act XIV. of 1908—Letters Patent, cls. 25 and 26.*] On a preliminary objection raised by the Crown with reference to the jurisdiction of the Court:—*Held* that the Letters Patent, s. 26, authorises the grant of a certificate by the Advocate-General in a case tried by a Special Bench appointed under the Indian Criminal Law Amendment Act (XIV. of 1908). The following five points of law were raised in the certificate of the Advocate General in this Letters Patent Appeal, *viz.*:—(1) Does the evidence of an accomplice require corroboration in material particulars before it can be acted upon; is it open to the Court to convict upon the uncorroborated testimony of an accomplice if the Court is satisfied that the evidence is true; and does not the Indian Evidence Act (I. of 1872), s. 133, read with s. 114, illustration (*b*), merely intend to lay down that a conviction upon the uncorroborated testimony of an accomplice is not illegal where the presumption of untrustworthiness attaching to the evidence of an accomplice is rebutted by special circumstances? (2) Can the previous statements of an accomplice legally amount to corroboration of the evidence given by him at the trial? (3) Is an Inspector of the Criminal Investigation Department an authority legally competent to investigate the fact within the meaning of s 157, Indian Evidence Act (I. of 1872)? (4) Is a statement of a confessional nature made by a witness to a police officer a confession of an accused person within the purview of s. 25, Indian Evidence Act? (5) While statements made by a person to a police officer in the course of an investigation and taken down in writing may not (by reason of s. 162 Criminal Procedure Code) be proved by the production of the writing, may such statements be proved by oral evidence? *On the first point, Held* (by BENSON, WALLIS and MILLER, *JJ.*) that the evidence of an accomplice need not be corroborated in material particulars before it can be acted upon and that it is open to the Court to convict upon the uncorroborated testimony of an accomplice if the Court is satisfied that the evidence is true. *Per* BENSON, J.—In my opinion there is

Evidence Act (I. of 1872) (*contd*)— nothing in the illustration (*b*) to s. 114 which overrides or renders nugatory the plain and explicit declaration contained in s. 133 or which requires us to hold that the evidence of an accomplice must always and in all circumstances be regarded as unworthy of credit unless it is corroborated in material particulars or which requires us to hold that it is not open to the Court to act on such evidence even when the Court believes it to be perfectly true. *Per* WALLIS, J.—S. 114 of the Indian Evidence Act authorises the Court to make certain presumptions of fact. Nine well-known maxims are there given as illustrations of the section, the second of which is "the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars." They are all presumptions which may naturally arise but the legislature by the use of the word "may" instead of "shall" both in the body of the section and in the illustrations shows that the Court is not compelled to raise them but is to consider whether in all the circumstances of the particular case they should be raised. *Per* ABDUR RAHIM, J.—It is well-established law that except in circumstances of an especial nature it is the duty of the Court to raise the presumption that accomplices' evidence is unworthy of credit as against the accused persons unless it is corroborated in material particulars and the failure of the Judge to direct the jury to that effect is an error in law. It will none the less be an error in law if the trial was held without a jury and the Judge or the Magistrate misdirected himself on this point and treated an accomplice's evidence like that of any other witness. To my mind it is quite clear from the nature of the cases cited in the illustrations that, except in the special circumstances, examples of which are attached to the section, the legislature requires that the Court should make the natural presumptions referred to in the section. No doubt there are cases and cases and while in doubtful cases the position contended for on behalf of the Crown may well be sound there is nothing at least in the Indian Evidence Act or in reason that in other cases in which there could be no two opinions that the presumption that an accomplice is unworthy of credit unless corroborated applies in full force not being either negatived or rebutted an omission to raise the obvious presumption should not be treated as an error in law. On the other hand the illustrations to s. 114 furnish an indication to the contrary. There is no foundation whatever for the suggestion that these provisions are in any respect different from that is laid down in the rulings of the Indian Courts on the

Evidence Act (I. of 1872) (*contd.*)— subject, either since the passing of the Indian Evidence Act or before it or of the English Courts. *Per* SUNDARA AYYAR, J.— Having regard to the condition of the case law in England it would be safe to proceed to determine the law in this country by a consideration mainly, if not solely, of the provisions of the Indian Evidence Act. Judges are entitled to lay down a rule that although the legislature has given the Court the discretion to make a particular presumption or not according to the circumstances, the proper course for the Courts to follow is to make the presumption unless there be special occasion for not doing so. This does not deprive the Court of the right given by the legislature to exercise its discretion. There may no doubt be circumstances in any particular case which would justify the Court in not making the presumption [in illustration (*b*)]. But I think it would be reasonable to hold that there must be some good reason given for not making the presumption in such a case. I entirely agree with the statement of the law by EDGE, C. J., in *Queen-Empress* v. *Gobardhan*, where after he points out that a jury being bound to convict on the uncorroborated evidence of an approver if they believe it a Judge cannot direct them to acquit the accused in the absence of corroborative evidence, he says: "A Judge would advise a jury that it would be unsafe to act upon, in other words to believe, the uncorroborated evidence of an accomplice as he would advise a jury not to act upon the evidence of any other witness whose evidence might from any cause be open to suspicion. But in either case he would have to tell the jury that if they believed the evidence they might legally convict the prisoner."—With this addition that it is the duty of the Judge to draw the attention of the jury to any circumstance either in favour of or against tbe credibility of the accomplice. *On the second point*, *Held* (By BRNSON, WALLIS and MILLER, JJ.) that the previous statements of an accomplice can legally amount to corroboration of the evidence given by him at the trial. *Per* BRNSON, J.—I do not think there is anything in the Indian Evidence Act to exclude the evidence of accomplices from the plain and express rule in section 157, nor can it be suggested that "corroborate" is used in section 157 in a different sense from that in which it is used in illustration (*b*) to section 114. The former statement of an accomplice is, therefore, legally admissible to corroborate his testimony at the trial but the weight to be attached to it, or, in other words, how far it does really corroborate the evidence given at the trial must vary with the facts of each

Evidence Act (I. of 1872) (*contd.*)— case. No hard-and-fast rule, capable of mechanical application, can be laid down. In the great majority of cases it would, no doubt, be found to be merely the repetition of tainted evidence affording no ground for believing it to be true, and, therefore, adding nothing whatever to its value. On the other hand, if there was evidence or even a suggestion put forward by the defence that the evidence given by the witness at the trial was the result of recent influences brought to bear upon him, it would be most important to be able to prove that the witness had made statements to the same effect as his evidence at the trial long before the influences relied on by the defence had been brought to bear upon him. If it is necessary in this case to determine whether the phrase "material particulars" in illustration (*b*) to section 114 is to be regarded, as in some sense, a technical expression implying corroboration by independent or untained evidence, I am unable to go so far and to say that as a matter of law the previous statement of an accomplice can never amount to corroboration in material particulars. If there are some circumstances in which a prior statement may amount to sufficient corroboration we cannot say as a matter of law that a prior statement can never be corroboration in material particulars though no doubt in the great majority of cases it will be found that the prior statements do no add anything to the credibility of the evidence given at the trial . . . . How far a prior statement does corroborate evidence given at the trial is a matter to be determined by the jury or where there is no jury by the Judge. *Per* WALLIS, *J.*—Previous statements admissible as corroboration under s. 157 of the Indian Evidence Act may or may not amount to sufficient corroboration and whether they will be so or not depends on the facts and circumstances of the particular case. Taken by itself the previous statement may of course be as tainted and untrustworthy as the evidence in the box and not supply any real corroboration; but on the other hand the circumstances in which it was made may afford strong corroboration of its truthfulness apart from the credibility of the accomplice. *Per* MILLER, *J.*—I see danger and not safety in ruling out as inadmissible in the case of accomplice witness any tests of credibility which are available in the case of other witnesses whether the test applied tends to confirm or to discredit the evidence. *Per* SUNDARA AYYAR, *J.*—The previous statement of an accomplice cannot legally amount to corroboration within the meaning of illustration (*b*) to s. 114 of the Indian Evidence

Evidence Act (I. of 1872) (*contd.*)— Act. The question whether it is admissible at all as corroborative evidence under s. 157 for any other purpose is not free from doubt. It is possible to hold that it is admissible for proving his consistency and as disproving a suggestion that it was recently concocted by him. But I am inclined to think that it would be dangerous to admit it even for this limited purpose of proving his consistency. To do so would lead to the danger of its being relied on to prove the truth of the evidence also. This is likely to defeat the object of the rule requiring independent evidence of corroboration. The safer rule in my opinion would be to hold that s. 114, illustration (*b*), requires the rejection of the previous statement altogether. *On the third point, Held* (by BENSON, WALLIS and MILLER, *JJ.*) that an Inspector of the Criminal Investigation Department is an authority legally competent to investigate the fact within the meaning of s. 157, Indian Evidence Act. *Per* BENSON, *J.*—I do not think that the words "investigate the fact," in s. 157 of the Indian Evidence Act should be construed in a narrow sense so as to restrict competence to the police officer who under Chapter XIV. of the Criminal Procedure Code is charged with the investigation of an offence. *Per* WALLIS, *J.*—S. 156 and 157 deal with the corroboration of witnesses as to relevant facts and reading the two sections together I think s. 157 should be read thus as if the words in brackets were there "in order to corroborate the evidence of a witness (as to a relevent fact) any former statement made by the witness as to the same fact before any authority competent to investigate the fact may be proved." The Presidency may well be held to be the "local area" to which the seven Inspectors in the department on whom the work of investigation must necessarily fall are appointed. I am inclined to think that the word investigate in s. 157 of the Indian Evidence Act cannot be read as limited to investigation under the Code of Criminal Procedure, that the Inspector had been brought down from Madras specially to investigate the murder of Mr. Ashe and that he was not only legally competent but under a duty to investigate and in the course of such investigation to record the statements now in question. *Per* ABDUR RAHIM, *J.*—One would not in my opinion be justified in construing s. 157 in a loose general sense having regard to the fact that it permits a statement made in the absence of a party to a proceeding which he had no means of testing to be used in evidence against him. Such departure from the ordinary rule relating to judicial evidence must be confined within the strictest limits.

Evidence Act (I. of 1872) (*contd.*)— It was argued by the pleaders for the accused that the word investigate in s. 157 in the Indian Evidence Act is used in the technical sense of the Criminal Procedure Code. But this is clearly not so. The application of that section of the Indian Evidence Act is not confined to criminal cases and the word investigate is obviously used in its natural and popular meaning. The Criminal Investigation Department was created to assist the ordinary Police force in the detections of certain crimes and neither that fact nor the fact that a member of the Criminal Investigation Department holds the rank of an Inspector would by itself entitle him to exercise the same powers within the Presidency of Madras as an officer in charge of a police station has within the local limits of his station under s. 157, Criminal Procedure Code. *Per* SUNDARA AYYAR, *J.*— Legally competent must I think mean "having power under some law statutory or otherwise" The power need not be derived from an express provision of the law as stated by the majority of the Special Bench if by that expression be meant "some definite statutory enactment" but it must be shown that there is power under some law or other to investigate. The words "authority" and "competent" support this view. S 21 of the Police Act (XXIV. of 1859), which makes it the duty of a police officer to detect and bring offenders to justice cannot be taken to give a police officer all powers necessary for that purpose and therefore power to investigate offences and that every police officer has these powers throughout the Presidency. It is quite impossible to hold that the mere imposition of duties of a comprehensive nature would authorise a person on whom they are imposed to restrain the rights of liberties of individuals or to exercise any specific powers over them. It cannot be inferred that an Inspector of the Criminal Investigation Department has been appointed to any local area under s. 551, Criminal Procedure Code. *On the fourth point, Held* (by BENSON WALLIS, AND SUNDAR AYYAR, *JJ.*) that a statement of a confessional nature made by a witness to a police officer is a confession of an accused person within the purview of s. 25, Indian Evidence Act. *Per* BENSON, *J.*—It seems to be especially undesirable to extend the language of s. 25 beyond its plain meaning when the effect of doing so might tend to encourage those corrupt practices of the Police in regard to working for confessions which it is the policy of the law to prevent. Effect must be given to the language of s 25 and it renders the statements of the approvers to the Inspector inadmissible. *Per* WALLIS, *J.*—I think the safer as it is certainly the simpler course is to read the words of the section in their natural meaning without putting any restrictive interpretation upon them and so reading them I hold that these confessions were inadmissible even as corroborative evidence, under s. 25 of the Evidence Act. *Per* MILLER, *J.* —Ss. 25, 26 and 27, Indian Evidence Act, were imported into the Indian Evidence Act, from the Criminal Procedure Code of 1861. . . . Those sections of the Code were not dealing with the question of witnesses in criminal trials. . . . I am unable to find any reason for giving the sections (in the Evidence Act) a more extended meaning than they bore in the Code of 1861. I am unable to see that it is more dangerous to allow a witness to be corroborated by a self incriminating statement made to a police officer than by a self-exculpatory statement to the same effect. *Per* ABDUR RAHIM *J.*—The word "confession" used in s. 25, Evidence Act, could not have been used in the wide and popular sense in which it is used in every day conversation as meaning an acknowledgement of some fault for that would make the section ridiculous and there can be little doubt that it is to be understood in the technical sense of the criminal law. Whether a statement is to be called a confession or not depends not merely upon the nature of the statement itself but also on the use which is sought to be made of it. Whenever the evidentiary value of a statement as against the person making it is in question it is then that it would be properly called an adismission or confession according as the proceeding in which the question arises is of a civil or criminal nature but not when it is intended to be used as evidence against a third person. *Per* SUNDARA AYYAR *J.*— The word confession does not import that the admission of guilt should be by a party to the criminal proceeding before the Court. If the word confession in s. 25 was intended to refer only to an admission made by a party to the proceeding before the Court the legislature would have said so. The expression "made by an accused person" in s 24, Evidence Act, means that the person must be an accused person at the time of the confession. An admission of guilt made to a police officer *by any person* cannot be proved as against *any person accused* of any offence whether he be the person who made the admission or not. *On the fifth point, Held* (*per totam curiam*) that while statements made by a person to a police officer in the course of an investigation and taken down in writing may not (by reason of s. 162, Criminal Procedure Code) be proved by the production of the writing, they may be proved by oral evidence. Be-

Evidence Act (I. of 1872) (*contd.*)—

fore the High Court has decided any point of law raised in the Advocate General's certificate, the accused cannot be heard on any point not included in the certificate.—MUTHUKUMARASWAMI PILLAI *v.* KING-EMPEROR, I. L. R., 35 Mad. 397.

5. INDIAN EVIDENCE ACT (I. OF 1872), SS. 25, 114, ILLUST. B. 133, 157—*Criminal Procedure Code (Act V. of 1898) ss. 154, 155, 157. 162 and 551—Approvers, evidence, corroboration of—Admissibility of previous statements of—to Police Inspector—Value of such statements as corroboration—"Legally competent to investigate," meaning of—Competency of officer of Criminal Investigation Department.*] Sir ARNOLD WHITE, *C.J.*, and AYLING, *J.*—It is not the law either in England or India that the evidence of an accomplice must be corroborated in material particulars before it can be acted upon. Where a Court is Judge of fact as well as of law the Court as a Judge of fact is not precluded from considering the question whether the unsupported evidence of an accomplice is true or not. A Court may be warranted in declining to draw the presumption of fact referred to in illustration (*b*) to s 114, Indian Evidence Act (I. of 1872). S. 133, Indian Evidence Act, is the substantive enactment declaring the law whereas s. 114 only lays down certain propositions intended to assist the Courts in drawing inferences of fact. Where the Court is acting in the capacity of both Judge and Jury, it must direct itself and the proper direction would be:—Consider the evidence of the approvers, always bear in mind that it is tainted evidence, scrutinize it with the utmost care, accept it with the greatest caution, consider it in the light of the circumstances in which it is given and in the light of all the other circumstances in the case of which evidence is legally admissible. Then, if you believe it, act on it even if there is no corroboration in the strict sense of the word. If you do not believe it, reject it. *In re Meunier*, 2 Q. B. 415, approved. *Reg.* v. *Ramasani Padayachi*, I. L. R., 1 Mad. 394, approved. What are the "material particulars" referred to in the Indian Evidence Act (I. of 1872), illustration (*b*), must depend upon the nature of the charge and the facts of the particular case. Oral testimony of independent witnesses is not necessary. SANKARAN-NAIR, *J.* (*dissentiente*).—The Indian Evidence Act ss. 133 and 114. illustration (*b*) embodies the rules of English law that the presumption must first be drawn that the evidence of an accomplice is unreliable and exceptional circumstances must be proved to justify its acceptance. The question is not whether a conviction based on the uncorroborated testimony of an accomplice is legal but whether there is a presumption that such testimony cannot be accepted without corroboration. A person should not be convicted except under "very special circumstances" upon the uncorroborated testimony of an accomplice. The "special circumstances" are that the grounds on which an accomplice's evidence has been held to be untrustworthy did not either exist in the case or did not exist in their full strength: that there are countervailing considerations of greater weight which diminish or entirely get rid of the weight due to such presumptions. In cases tried by a jury, a jury has to be advised by the Judge of what I have above referred to. The CHIEF JUSTICE and AYLING, *J.*—It cannot be laid down as a proposition of law that previous statements of an accomplice cannot be regarded as corroborative of evidence given by him at his trial. *Reg.* v. *Malapabi Kupana*, 11 B. H. C. R. 196, dissented from. SANKARAN-NAIR, *J.* (*dissentiente*).—A previous statement by the accomplice himself or a statement by another accomplice is not the corroboration required under the rule as to material particulars. The CHIEF JUSTICE and AYLING, *J.*—The words "before any authority legally competent to investigate the fact" in s. 157, Indian Evidence Act, are quite general and should not be restricted to police officers and to "investigations" in the technical sense in which the word is used in the Code of Criminal Procedure. The words are competent to investigate not a *case* but "*the* fact." The words "legally competent" do not mean only competent under some express provision of law. An Inspector of the Criminal Investigation Department has power to investigate in cases to which s 156, Criminal Procedure Code, applies. As such his "local area" is the Presidency of Madras. SANKARAN-NAIR, *J.* (*dissentiente*).—The police officers entitled to investigate an offence are the police officers referred to in the Code of Criminal Procedure, *i.e*, a station-house officer (ss. 156, 157), an officer in charge of a police station (ss. 154, 155, cl. 1) and police officers superior in rank to an officer in charge of a police station (s. 551). An Inspector of the Criminal Investigation Department is not such an officer and his evidence is not admissible under s. 157, Indian Evidence Act, he not being "any authority legally competent to investigate the fact" under s. 157, Criminal Procedure Code. The CHIEF JUSTICE and

Evidence Act (I. of 1872) (*contd.*)—

and AYLING, *J.*—A statement of a confessional nature made to a police officer by a witness is not a confession of an accused person within the purview of s. 25, Evidence Act. S. 25 lays down that such a statement cannot be used against the person making it while on his trial. SANKARAN NAIR *J.* (*dissentiente*) —The statements of approvers to the Police Inspector being really confessions are inadmissible in evidence against the accused under s. 25, Indian Evidence Act. A confession is not the less a confession because it is sought to be used against other persons. *Per totan curiam.*—Under s. 162, Criminal Procedure Code, the written record of a statement made to a police officer in the course of an investigation cannot be used as evidence but the section does not exclude oral evidence of the statement whether the statement has been taken down in writing or not.—KING-EMPEROR *v.* NILAKANTA, I. L. R., 35 Mad 247.

6. EVIDENCE ACT (I. OF 1872) S 30—*Confession of co-accused not to be acted upon without corroboration—Misdirection to jury.*] The confession of a co-accused is on an even lower footing than the evidence of an accomplice and a conviction based on such a confession alone is bad in law. S 30 of the Evidence Act only provides that such a confession is to be an element in the consideration of all the facts of the case, but it does not do away with the necessity for other evidence. It is the duty of the Judge, when there is no other evidence than the confession of a co accused to direct the jury accordingly and tell them to acquit the accused; and his omission to do so is a misdirection which will vitiate a conviction.—GIDDIGADU *v.* EMPRROR, I. L. R, 33 Mad. 46.

7. EVIDENCE ACT (I. OF 1872) S 91—*Search-list does not exclude oral evidence of matters stated therein—Confession not recorded in compliance with orders of Government—Such confession admissble if voluntary.*] S 91 of the Evidence Act has no application when the writing is not evidence of the matter reduced to writing. A search-list is not evidence of the matter stated therein and it does not therefore exclude oral evidence of such matter. G.O., No. 2383, Judicial, paragraph 5 (dated 17th December 1887), directs that no Magistrate may record any confession or statement under s. 167, Criminal Procedure Code, until he has first recorded in writing his reasons for believing that the accused is going to make such statement voluntarily: *Held*, that non compliance with an order of Government as to the formalities to be observed in recording confessions, does not render a confession inadmissible in evidence The Court has to determine whether such confession was voluntary or not.—PUBLIC PROSECUTOR *v.* SARABU CHENNAYYA, I. L. R., 33 Mad. 413.

Evidence Act (I. of 1872) (*contd.*)—

8. EVIDENCE ACT (I. OF 1872) S. 91—*Oral evidence admissible to prove what took place at time of search.*] Where a search has been conducted under the Criminal Procedure Code, the search-list is not the only evidence admissible as to the matters dealt with therein. S. 91 of the Evidence Act does not exclude oral evidence of what took place at the time of search. *Abdul Khadir and others* v. *Queen-Empress*, (Weir's "Criminal Rulings," 4th edition, volume 2, page 515), dissented from. *Public Prosecutor* v. *Sarabu Chennayya* (I. L. R, 33 Mad. 413) followed. — ELAMATHAN *v.* EMPEROR, I. L. R, 33 Mad. 416.

9. EVIDENCE ACT (I. OF 1872) S 91—*Oral evidence admissible to show that a contract made by a person in his own name was made on behalf of himself and his partners.*] Under English Law, in an action on a written contract, oral evidence is admissible to show that the party liable on the contract contracted for himself and as the agent of his partners. Such partners are liable to be sued on the contract, though no allusion is made to them in it. This is also the law in India as there is nothing in s 91 of the Evidence Act to show that the Legislature intended to depart from this settled rule of English Law.—VENKATASUBBIAH CHETTY *v.* GOVINDARAJULU NAIDU, I L. R., 31 Mad 45.

10 EVIDRNCE ACT (I OF 1872) S. 112—*Claim by illegitimate son of a Hindu, by a woman not a Hindu, to maintenance.*] There is no text of Hindu law under which an illegitimate son of a Hindu, by a woman who is not a Hindu, can claim maintenance. Plaintiff, (who sued for maintenance out of the assets of his deceased father, a Sudra), was an illegitimate son, his mother being a Christian:—*Held* that plaintiff could not be regarded as a Hindu by birth and he was, in consequence, not governed by Hindu law, and was not entitled to maintenance. Under the rules laid down by Hindu law for determining the caste of the offspring of unions between parents belonging to different castes (amongst the four recognized main castes), the Dharma or religious rites applicable to the offspring are those prescribed for the mother's caste. Though an illegitimate child is entitled to claim maintenance from his father under s. 488 of the Criminal Procedure Code, such claim can only be enforced during the

Evidence Act (I. of 1872) (*contd.*)—

life-time of the father and the right terminates with his death. Such a statutory right is cumulative and does not deprive persons otherwise entitled to maintenance, by the common law, of their right to enforce payment of maintenance by action brought against the father during his life-time or against his estate after his death. But where persons are not entitled under the common law to claim maintenance from the father, the right conferred by statute can only be enforced by the particular remedy provided by the statute and to the extent provided therein. Plaintiff, therefore, who could only rely on the statutory right, could not seek to enforce it by suit; nor did the right exist after the father's death. — LINGAPPA GOUNDAN *v.* ESUDASAN, I. L. R., 27 Mad. 13.

Examination of Accused—

EXAMINATION OF ACCUSED — *Criminal Procedure Code (Act V. of 1898), s. 209—Examination of accused before committal—Discretion of Magistrate.*] It is the duty of a Magistrate, before committing accused persons for trial, to examine them for the purpose of enabling them to explain any circumstances appearing in the evidence against them. The effect of s. 209 of the Criminal Procedure Code (Act V. of 1898) is that it is not left to the discretion of the Magistrate who intends to commit to examine the accused. He is bound to examine them, and if he makes an order of commitment without such examination, the order is irregular.—QUEEN-EMPRESS *v.* PANDARA TEVAN, I. L. R., 23 Mad. 636.

Excisable Articles—

EXCISABLE ARTICLES—"*Spirituous and fermented liquors*" — *Drugs containing spiritious liquor—Manufacture, sale or possession—Transport, import or export—Bengal Excise Act (V. of 1909), ss. 46, 52, 55 and 57—Board Notifications—License—Misconduct of servant or agent.*] The meaning of the Legislature in amending the Bengal Excise Act (VII. of 1878) was to prevent chemists and vendors of drugs selling intoxicating liquors or otherwise dealing with them, and not to penalise the use of beneficent drugs. To be an excisable article, liquor must be intoxicating liquor. The term "spirituous liquor" is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition. S. 55 of the Bengal Excise Act (V. of 1909) refers to manufacture, sale or possession of excisable articles. It does not apply to import, transport or export. S. 56 makes the holder of a license, permit, or pass liable for the misconduct of his servant or agent in matters of import, transport or export. *Gonesh Chunder Sikdar* v. *Queen-Empress*, I. L. R., 24 Cal. 157, approved.—MATI LAL CHANDRA *v.* EMPEROR, I. L. R., 39 Cal. 1053.

Excise—

1. EXCISE—*Sale of Ganja without license by servant in presence of master—Receipt of money by servant—Servant, liability of—Bengal Excise Act (Ben. Act VII. of 1878), s. 53—Penal Code (Act XLV. of 1860), ss. 34, 40, and 114.*] Where both master and servant were present at the sale of *ganja* in contravention of the terms of his license, and the servant received the money paid for the *ganja*: *Held*, that, having regard to the provisions of s. 34 of the Penal Code, the servant was guilty of the offence of selling *ganja* without a license, and that under the circumstances of the case, s. 114 of the Penal Code had no application. *Queen-Empress* v. *Harridas San* (I. L. R., 17 Cal. 566) distinguished.—KESHWAR LAL SHAHA *v.* GIRISH CHUNDER DUTT, I. L. R., 29 Cal. 496.

2. EXCISE — *Commission by servant of licensed manufacturer or vendor of act in breach of conditions of license—Liability of servant—Bengal Excise Act (Ben. Act VII. of 1878), s 59*] *Held*, that the servant of a manufacturer or vendor under Bengal Act VII. of 1878 is not liable under s. 59 of the Act to the penalty provided by that section for the commission of an act in breach of any of the conditions of the license of such manufacturer or vendor not otherwise provided for in the Act. *The Empress* v. *Nuddiar Chand Shaw* (I. L. R., 6 Cal. 832) and *In the Matter of Numulla Akond* (11 C. L. R. 416) approved; *Ishur Chunder Shaha* (19 W. R. Cr. 34) distinguished, and *Empress* v. *Baney Madhub Shaw* (I. L. R., 8 Cal. 207) overruled.—IN THE MATTER OF KALU MAL KHETRI, I. L. R., 29 Cal. 606.

3. EXCISE—*Common Intention.*—Where both master and servant were present at the sale of *ganja* in contravention of the terms of his license, and the servant received the money paid for the *ganja*, *held* that, having regard to the provisions of s. 34 of the Penal Code, the servant was guilty of the offence of selling *ganja* without a license, and that, under the circumstances of the case, s. 114 of the Penal Code had no application. *Queen-Empress* v. *Harridas San* (I. L. R., 17 Cal. 566) distinguished.—KESHWAR LAL SHAHA *v.* GIRISH CHUNDER DUTT, I. L. R., 29 Cal. 496.

4. EXCISE—*Abkari Act (Bom. Act V. of 1878), ss. 3 (9), 62—Medicated article—Intoxicating drug — Cocaine.*] The term "medicated article" as used in s. 62 of the

Excise (*contd.*)—

Bom. Abkari Act (Bombay Act V. of 1878), applies to something which is manufactured and by that manufacture is imbued with certain medicinal properties It does not therefore include cocaine, which is a medicine *per se*. The word "intoxicating" as used in s. 3, clause 9 of the Bom. Abkari Act (Bombay Act V. of 1878), cannot be confined to its derivative meaning, namely, poisonous: the word must be taken to be used in its popular sense, which would include the effects produced by cocaine — EMPEROR *v.* JAMSETJI C. CAMA, I. L. R., 27 Bom. 551.

Excise Act (III. of 1856)—

1. EXCISE ACT—*Abkari Act (Mad. Act I. of 1886), s. 56 (b)—License to keep toddy shop — Failure to keep shop open —Omission not constituting an act.*] By s 56 (*b*) of the Abkari Act (Madras) 1886, whoever, being the holder of a license or permit granted under the Act, "does any act in breach of any of the conditions of his license or permit not otherwise provided for in this Act" may be punished with fine or imprisonment or with both. The holder of a license to keep a shop for the sale of toddy having been convicted for failing to keep his shop open in breach of one of the conditions of the license, *held* that, even if the licensee was under an obligation to keep open his shop (which did not appear to be the case), an omission to do so did not amount to an act in breach of the conditions of the license; and that the conviction must, in consequence, be set aside.—QUEEN-EMPRESS *v* VENKATASAMI NAIDU, I. L. R., 23 Mad. 220.

2. EXCISE ACT—*Sale of liquor—License —Agreement in contravention of Excise Act.*] The object of the Excise Act is to prohibit persons from selling or carrying on the business of selling exciseable articles without a license. The prohibition by the Act of the sale of liquor without a license is based upon the principle of public policy and on moral grounds, and the purpose of the Act is not confined to the protection of the revenue. *Boistub Churan Naun* v. *Wooma Churan Sen*, I. L. R., 16 Cal. 436, referred to. The principle deduced from the licensing Act of 1856 clearly underlies the later Act that an agreement which contravenes the policy of the Act or which has for its object the carrying on of a business in contravention of the excise law is illegal. *Jadoo Nath Saha* v. *Novin Chunder Shaha* (21 W. R. 289) referred to. — BEHARI LALL SHAHA *v.* JAGODISH CHUNDER SHAHA, I. L. R., 31 Cal. 798.

Exposure of Child—

EXPOSURE OF CHILD—*Penal Code (Act XLV. of 1860), s. 317—Exposure of child with intention to abandon—Ingredients of offence.*] Upon a charge being preferred against a mother of exposure and abandonment of her child, under s. 317, Indian Penal Code, the Sessions Judge believed that the accused had left the child at a particular spot with the intention that it should be found and cared for by the owner of a neighbouring house. He acquitted her, holding that the offence charged had not been committed, inasmuch as the child had been deliberately placed where it would be (as in fact it was), found and looked after. *Held* that the acquittal was wrong. The gist of the offence under s. 317 is the exposure or leaving with intention to wholly abandon, and the manner of exposing or leaving, and the consequences likely to ensue are not essential ingredients though they may be taken into consideration in passing sentence.—KING-EMPEROR. *v.* ANTAKKE, I. L. R., 24 Mad. 662.

Extortion—

EXTORTION — *Confinement — Abetment —Evidence—Appeal Court—Misjoinder— Indian Penal Code (Act XLV. of 1860) s. 347—Criminal Procedure Code (Act V. of 1898) s. 428*] A Head constable in charge of a police-outpost agreed to drop proceedings against K, who had been arrested on a certain charge on condition that K paid to him a sum of money. The Head constable sent away K in charge of two chowkidars to procure the money. In order to effect this object the chowkidars subsequently confined K at various places and maltreated him. *Held*, that it would be impossible to hold the Head constable guilty of abetting an offence under s. 347 of the Penal Code in the absence of proof that he gave definite orders to that end. Where in an appeal a Sessions Judge is of opinion that the evidence of witnesses, who where not examined in the Lower Court, is necessary, he should proceed under s 428 of the Criminal Procedure Code. Where in showing cause against a Rule obtained by a petitioner, an objection as to misjoinder, which formed no portion of the Rule, was taken by the Crown for the first time, the High Court declined to give effect to it.—EMPEROR *v.* LUCHMUN SINGH, I. L. R., 31 Cal. 710.

Extradition—

1. EXTRADITION—*Jurisdiction of High Court to revise proceedings of Magistrates under the Extradition Act—High Courts Act, 1861 (24 and 25 Vict. c. 104) s. 15— Extradition Act (XV. of 1903) ss. 3 and 4.*] The High Court has no jurisdiction under s. 15 of the Charter Act,

Extradition (*contd*)—

to revise the proceedings of a Magistrate acting under ss. 3 and 4 of the Extradition Act. *In re Mohunt Deva Dass*, I. L. R., 38 Cal. 550 (note), referred to.—RUDOLF STALLMANN *v.* EMPEROR, I. L. R., 38 Cal. 547.

2. EXTRADITION—*Effect of illegal arrest on trial of accused—Criminal Procedure Code (Act V. of 1898), s. 188.*] Where a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The principle upon which English cases to this effect are based underlies also s. 188 of the Criminal Procedure Code (Act V. of 1898). EMPEROR *v.* VINAYAK DAMODAR SAVARKAR, I. L. R., 34 Bom. 225.

Extradition Act—

EXTRADITION ACT (XV. OF 1903), SS 7, 8—*Power of Magistrate to hold to bail the person arrested to appear before a tribunal in a Foreign State.*] There is no provision in the Criminal Procedure Code (Act V. of 1898) or in the Extradition Act (XV. of 1903) authorizing a Magistrate to hold a person to bail to appear before a tribunal in a State, to which the Extradition Act applies, unless the warrant is endorsed under the provisions of s. 8 of the Act.—BALTHASAR *v.* EMPEROR, I. L. R., 33 Cal. 1032.

F.

False Charge—

See COMPENSATION.

1. FALSE CHARGE—*Police—Order by the District Magistrate sanctioning a prosecution—Legality of order—Offence not brought to his notice in the course of a judicial proceeding—Criminal Procedure Code (Act V. of 1898), s. 476.*] Where the petitioner laid a charge of mischief by fire at the *thana*, which was reported to be false, and the District Magistrate, upon the receipt of a report to the same effect from a Deputy Magistrate, to whom he had sent the case for a judicial inquiry, passed the final order in the Police report in these terms—"Enter false, s. 436, Penal Code. Prosecution under s. 211, Penal Code, sanctioned. To Babu M. N. Mukerjee for trial:" *Held* that the order of the District Magistrate was made under s. 476 and not under s. 195 of the Criminal Procedure Code, and was bad, as the matter of the false charge had not come before him in the course of a judicial proceeding. *Semble* that, if the District Magistrate had made an inquiry into the truth or falsity of the charge, he might have had power under s. 476 of the Code: or the Deputy Magistrate, who held the inquiry, might have ordered the prosecution of the petitioner.—HAIBAT KHAN *v* EMPEROR, I. L. R., 33 Cal. 30; 10 C. W. N. 30.

False Charge (*contd.*)—

2. FALSE CHARGE—*Order to show cause without examination of complainant and disposal of complaint—Criminal Procedure Code (Act V. of 1898) ss. 4 (h), 200 to 203—Penal Code (Act XLV. of 1860) s. 211.*] J. laid a charge at the *thana* against two persons, under s. 436 of the Penal Code, which the police after investigation reported as false. He thereupon filed a petition before the Sub-divisional Magistrate impugning the correctness of the police report, and praying that the persons accused by him might be brought to trial. The Magistrate did not examine the complainant, but ordered the petition to be "put up with police report," and on the next day required him to show cause why he should not be prosecuted under s. 211 of the Penal Code. He afterwards referred the case for inquiry and report to a Sub Deputy Magistrate with second class powers, who, after examining the complainant and his witnesses, reported the charge to be maliciously false. The Sub divisional Magistrate then heard J's pleaders, and agreeing with the report passed an order directing his prosecution. *Held* that the petition to the Sub-divisional Magistrate was a "complaint" within s. 4 (*h*) of the Criminal Procedure Code. *Held further* that, according to the current of decisions of the Court, when a person institutes before the police criminal proceedings, found on inquiry to be false, before he can be prosecuted under s. 211 of the Penal Code, he must first have an opportunity of proving his case; that, if he impugns the correctness of the police inquiry by a petition, he is entitled to have the persons complained against tried on the charge, or else his statement must be recorded on oath and his complaint dismissed under s. 203 of the Criminal Procedure Code; and that the order of the Magistrate in the case was therefore bad. *Queen-Empress* v. *Sham Lall*, (I. L. R., 14 Cal. 707), *Mahadeo Singh* v. *Queen-Empress* (I. L R., 27 Cal. 921), *Gunamony Sapui* v. *Queen-Empress* (3 C. W. N. 758), *Budh Nath Mahato* v. *Empress* (4 C. W. N. 305), *Re Sahiram Agarwalla* (5 C. W. N. 254), followed, but the propriety of the procedure laid down in these cases discussed. *Ramasami* v. *Queen-Empress* (I. L. R., 7 Mad. 292), *Imperatrix* v. *Fijibhai Govind*, (I. L. R., 22 Bom. 596); *Queen-Empress* v *Raghu Tewari*, (I. L R., 15 All. 336) referred to.—JOGENDRA NATH MOOKERJEE *v.* EMPEROR, I. L. R., 33 Cal. 1; 10 C. W. N. 158.

False Charge (*contd.*)—

3. FALSE CHARGE—*Prosecution for making—Necessity of examination of complainant—Dismissal of complaint—Order for judicial inquiry or report without examining complainant, Legality of—Penal Code (Act XLV. of 1860), s. 211—Criminal Procedure Code (Act V. of 1898), ss. 202, 203, 476*] Where a Magistrate, after having examined the complainant, and without hearing his witnesses or dismissing the complaint, ordered the complainant to be prosecuted under s. 211 of the Penal Code, *held* that the Magistrate's order was without jurisdiction. Where a complainant, whose complaint had been reported false by the police, complained to the Magistrate, and asked him to try the complaint, and the Magistrate did not examine the complainant himself, but made over the case to a Subordinate Magistrate for judicial inquiry or report, *held* that the Magistrate had no authority for this procedure. A complainant must be examined by the Magistrate who receives the complaint, or by some Magistrate to whom he has transferred the case. When a complainant has been examined, he is entitled to have the person accused brought before the Magistrate; and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can properly be refused, and an investigation held.—MAHADEO SINGH *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 921.

4. FALSE CHARGE — *Penal Code—(Act XLV. of 1860), ss. 211, 182—Instituting false complaint—Giving false information—Criminal Procedure Code—Act V. of 1898), s. 531—Proceedings in wrong place*] The word "charges" as it is used in s. 211 of the Indian Penal Code, means something different from "gives information." The words "false charge," as there used, must be construed with reference to the words which speak of the institution of proceedings:—*Semble*, the true test is;—Does the person who makes the statement which is alleged to constitute the charge, do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made. A petition was presented with the object (as the High Court held from its terms) of bringing to the knowledge of the authorities certain matters regarding which the petitioner had received information, in order that there might not be a repetition of an alleged tutoring of witnesses, and not with the object that the authorities should institute criminal proceedings: *Held*, that

False Charge (*contd.*)—

the petition did not amount to a "charge" within the meaning of s. 211 of the Indian Penal Code. To constitute an offence under s. 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. The fact that an information is shown to be false does not cast upon the party who is charged with an offence under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false. S. 531 of the Code of Criminal Procedure applies to a case where a Magistrate who has authority to commit a case for trial, does so, but has not territorial jurisdiction in the place where the offence to be tried is alleged to have been committed.—RAYAN KUTTI *v.* EMPEROR, I. L. R., 26 Mad. 640.

5. FALSE CHARGE—*Complaint—Petition to Collector against subordinate officer of Court of Wards—Dismissal of petition—Witnesses, opportunity to call—Sanction to prosecute—Penal Code (Act XLV. of 1860), s. 211—Code of Criminal Procedure (Act V. of 1898), ss. 4 (h) and 195.*] A petition to the Collector as the superior officer of the Court of Wards directed against one of his official inferiors, a subordinate officer of the Court of Wards *cutchery*, asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not a complaint within s. 4, cl. (*h*) of the Code of Criminal Procedure. Where on such a petition being presented, the Collector saw the petitioner and got him to repeat the statement made in the petition on oath and dealing with it judicially as if it were a complaint dismissed it, without giving the petitioner an opportunity of calling his witnesses, and ordered his prosecution under s. 211 of the Penal Code: *Held*, that the order for the prosecution of the petitioner under s 211 of the Penal Code should be set aside, as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint, and that if he had been justified in taking the course that he did, he should have given the petitioner an opportunity of calling his witnesses and proving his allegations.—JAGOBUNDHOO KARMAKAR *v.* EMPEROR, I. L. R., 30 Cal. 415.

See JURISDICTION, 4.

6. FALSE CHARGE—It is not in every case which a Magistrate considers to be false

False Charge (*contd.*)—

that he should direct, under s. 476 of the Criminal Procedure Code, a prosecution under s. 211, Penal Code. Each case must be judged by its own facts. Where, therefore, the Magistrate and the Judge came to different conclusions upon the evidence which was of a doubtful character and the complainant was a boy of 12 years of age, it was held that the Magistrate should not have directed his prosecution, and his order was accordingly set aside.—EMPEROR *v.* GOPAL BARIK, I. L. R., 34 Cal. 42.

7. FALSE CHARGE—The accused, a railway station master, sent the following telegram to a head constable of the Railway Police—" A bag of paddy was stolen from my goods-shed last night. Thief was caught. Please come, prosecute him." The head constable inquired into the matter, and reported it to be false. The Inspector of Police, in submitting the case to the District Magistrate, recommended that the station-master should be called upon to show cause why he should not be prosecuted under s. 182 or s. 211 of the Penal Code. A judicial inquiry was held by a Deputy Magistrate, and the District Magistrate sanctioned the prosecution of the accused. The accused was tried and convicted under s. 182 of the Penal Code, by an Assistant Magistrate with second-class powers. *Held* that the sanction given by the District Magistrate was sufficient; that a prosecution for a false charge might be under s. 182 or s. 211 of the Penal Code, but, if the false charge was a serious one, the proper course would be to proceed under s. 211. *Held*, further, that, the present case not being a serious one, it was quite legal to prosecute the accused under s. 182 of the Code. *Bhokteram* v. *Heera Kalita* (I. L. R., 5 Cal. 184) and *Russick Lal Mullick, In re* (7 C. L. R. 382) followed.—EMPEROR *v.* SARADA PROSAD CHATTERJEE, I. L. R., 32 Cal. 180.

8. FALSE CHARGE—An accusation of murder made to a Village Magistrate (who, under section 13 of Regulation XI. of 1816, has authority to arrest any person whom he suspects of having committed the murder of a person whose body is found within his jurisdiction) is a "charge" within the meaning of section 211 of the Indian Penal Code, even though it does not amount to the institution of criminal proceedings, and even though no criminal proceedings follow it owing to the police referring it as false on investigation.—CHENNA MALLI GOWDA *v.* EMPEROR, I. L. R., 27 Mad. 129.

9. FALSE CHARGE—The word "charges," as it is used in section 211 of the Indian Penal Code, means something different from "gives information." The words

False Charge (*contd.*)—

"false charge," as there used, must be construed with reference to the words which speak of the institution of proceedings. *Semble.*—The true test is: Does the person who makes the statement which is alleged to constitute the charge do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made. A petition was presented with the object (as the High Court held from its terms) of bringing to the knowledge of the authorities certain matters regarding which the petitioner had received information, in order that there might not be a repetition of an alleged tutoring of witnesses, and not with the object that the authorities should institute criminal proceedings. *Held* that the petition did not amount to a "charge" within the meaning of section 211 of the Indian Penal Code. To constitute an offence under section 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. The fact that an information is shown to be false does not cast upon the party who is charged with an offence under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false.—RAYAN KUTTI *v.* EMPEROR, I. L. R., 26 Mad. 640.

10. FALSE CHARGE—A person was convicted, under section 211 of the Indian Penal Code, of having preferred a false charge. It appeared that the accused had stated to a Police-officer that certain of the prosecution witnesses had stolen his goats, and that he had made this statement intending to set the criminal law in motion against those persons. The statement had not been reduced to writing in accordance with the requirements of section 154 of the Code of Criminal Procedure. On its being contended that there was no evidence of a false charge, within the meaning of section 211, *held* (1) that the test is—did the person who makes the charge intended to set the criminal law in motion against the person against whom the charge is made; (2) that (it being clear from the evidence that the accused did so intend) the fact that the statement made by the accused to the Police-officer had not been reduced

False Charge (*contd.*)—

to writing in accordance with section 154 of the Code of Criminal Procedure did not prevent the statement made from being a false charge within the meaning of that section.—MALLAPPA REDDI *v.* EMPEROR, I. L. R., 27 Mad. 127.

11. FALSE CHARGE—Where it is intended to prosecute any person under section 211 of the Indian Penal Code, such person ought to be given an opportunity of substantiating, if he can, the charge which he has brought before he is prosecuted. *Queen-Empress* v. *Ganga Ram* (I. L. R., 8 All. 38) and *Queen-Empress* v. *Raghu Tiwari* (I. L. R., 15 All. 336) followed.—EMPEROR *v.* TULA, I. L. R., 29 All. 587.

12. FALSE CHARGE—An offence under section 182 of the Penal Code is committed by a person giving false information to a Village Magistrate charging another with having committed an offence. Where such information is given with the view of its being passed on to the Station-house Officer, who, on receiving the information, takes a complaint in writing from such informant, the complaint is one taken under section 154, and not under section 162, of the Criminal Procedure Code. *The Queen* v. *Parianan* and *The Queen* v. *Narain* (I. L. R., 4 Mad. 241) distinguished.—EMPEROR *v.* JONNALAGADDA VENKATRAYUDU, I. L. R., 28 Mad. 565.

13. FALSE CHARGE—The accused sent a telegram to the Collector of Ratnagiri, in his capacity of the head of the Municipality at Vengurla, to the effect that "Head Master, English School (Vengurla), misappropriated Rs. 168 of fees since October. Please investigate yourself soon." For this, the accused was convicted under section 182 of the Indian Penal Code (Act XLV. of 1860), on the grounds that he had no probable cause for making the assertion contained in the telegram, and that he probably knew that a peon had confessed that he was guilty of the misappropriation. *Held* that on these facts the charge under section 182 of the Code could not be legally sustained.—EMPEROR *v.* RAMCHANDRA, I. L. R., 31 Bom. 204.

14. FALSE CHARGE—A petition to the Collector as the superior officer of the Court of Wards directed against one of his official inferiors, a subordinate officer of the Court of Wards *cutchery*, asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not a complaint within section 4, clause (*h*), of the Code of Criminal Procedure. Where, on such a petition being presented, the Collector saw the petitioner and got him to repeat the statement made in the

False Charge (*contd.*)—

petition on oath, and, dealing with it judicially as if it were a complaint, dismissed it without giving the petitioner an opportunity of calling his witnesses, and ordered his prosecution under section 211 of the Penal Code, *held* that the order for the prosecution of the petitioner under section 211 of the Penal Code should be set aside, as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint, and that, if he had been justified in taking the course that he did, he should have given the petitioner an opportunity of calling his witnesses and proving his allegations.—JAGOBUNDHOO KARMAKAR *v.* EMPEROR, I. L. R., 30 Cal. 415.

False Consideration—

FALSE CONSIDERATION— *Acts — 1860 — (XLV. Indian Penal Code), s. 423—"Dishonestly"—"Fraudulently" — False statement of price in a sale deed made with the view of defeating the claims of pre emptors.*] *Held* that the making of a false statement in sale deed of immoveable property as to the consideration for the sale, such statement being made for the purpose of preventing any person who might have a right of pre-emption in respect of property sold from coming forward to assert his right of pre-emption, is an offence which falls within the definition contained in s. 423 of the Indian Penal Code.—EMPEROR *v.* MAHABIR SINGH, I. L. R., 25 All. 31.

False Document.

FALSE DOCUMENT—*Penal Code s. 464*] It would be going too far to hold that, whenever the executant of a document attaches a false description to his name, he comes within the purview of s. 464, Indian Penal Code. But a false description may make a document a forgery, when it is found that the accused, by giving such a false description, intended to make out or wanted it to be believed that it was not he that was executing the document, but a fictitious person.—4 M. L. T. 463 Cr.

False Evidence—

1. FALSE EVIDENCE—*Penal Code (Act XLV. of 1860), ss. 192, 195 (b)—Statement made in a saminnamah by implication.*] The accused made an application to the Excise Deputy Collector stating that V. and R. lessees of *ganja* and opium shops had executed sub-lease in respect of certain shop, their lease having been liable to be cancelled therefor. Long before that, he executed a *saminnama* wherein he made the same statement which was found to be false. The accused was convicted under

False Evidence (*contd.*)—

s. 193 of the Penal Code for fabricating false evidence. *Held* that the offence was committed when the *zaminnamah* was executed long before the petition to the Deputy Collector was presented, and so no sanction was necessary for the prosecution of the accused for such an offence; and that the Collector before whom the *zaminnamah* was intended to be used, was not a Court within the meaning of s. 195, cl. (*b*) of the Criminal Procedure Code. Where the document does not contain a false statement in express terms but contains recital implying false statements the person making them would be guilty of fabricating false evidence.—MOHADEO MISSER *v.* NARAYAN RAM SHAH, 10 C. W. N. 220.

2. FALSE EVIDENCE — *Criminal Procedure Code, s. 193.*] It is an unusual and not a proper procedure for an Appellate Court, which did not hear the evidence, to order a prosecution for perjury committed in the lower Court, on materials which were not before that Court and which the witness had no opportunity of explaining while in the box.—LOKE NATH SAHI *v.* THE EMPEROR, 10 C. W. N. 1091.

3. FALSE EVIDENCE—*Penal Code, s. 193 —False statements involving Benami transactions—Vague charge.*] H was convicted under s. 193 of the Penal Code for having, in a judicial proceeding, made a false statement that a certain person was the real *thikadar* and not his *benamidar*. The charge as drawn up was as follows: "That you on or about the 7th day of May, 1904, at Leslie gave false evidence in a judicial proceeding, *viz.*, in a case under s. 133 of the Code and thereby committed an offence punishable under s. 193 Indian Penal Code within my cognizance." *Held* (1) that inasmuch as the statement involved questions of Benami transactions which could not properly be dealt with in a criminal case, the prosecution should not have been allowed to go on; (2) That the charge as drawn up was too vague for a prosecution, and (3) that in order to convict an accused for giving false evidence, it must be shown that the statement was false beyond all possibilities of doubt.—HERA NUND OJHA *v.* KING-EMPEROR, 10 C. W. N. 1099.

4. FALSE EVIDENCE—*Penal Code, ss. 193, 203—Accused person giving or fabricating false evidence for the purpose of concealing his own guilt.*] *Held* that an accused person cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a

Faise Evidence (*contd.*)—

crime with which he is charged.—EMPEROR *v.* Ram KHILAWAN, I. L. R., 28 All. 705.

5. FALSE EVIDENCE—*Penal Code—(Act XLV. of 1860), s. 193—Charge of giving false evidence — Contradictory statements by witness before the same Magistrate in the course of one and the same trial, on two different days—Conviction—Legality.*] On 18th January 1900, the accused deposed before a Magistrate that he had seen P and others gambling in a certain place. The deposition was read over to the accused, and acknowledged by him to be correct. On 1st February, he was cross examined, in the same case, before the same Magistrate, and he then deposed that he did not know P and had never seen him gambling. He was charged and convicted under s. 193 of the Penal Code of having intentionally given false evidence, in that he made two contradictory statements, one of which he either knew or believed to be false or did not believe to be true. On the question being raised, on revision, whether the conviction was legal, or whether it was illegal, by reason of the fact that the contradictory statements were made before the same Magistrate and in the course of one and the same trial:—*Held per* BENSON, *J.*, (to whom the case was referred).—That the conviction was legal. *Per* MOORE, *J.*—As no rule can be laid down to the effect that the contradictory statements must have been made at different inquiries or trials, (to render a person liable to conviction) the conviction could not be held to be illegal and should, consequently, not be interfered with in revision. *Per* BHASHYAM AYYANGAR, *J.*—The conviction was bad in law. No statement made by a witness in a deposition can be regarded as a completed statement until the deposition is finished, and corrected if necessary; for till then, every statement is liable to be retracted, corrected, varied or qualified, and until his *viva voce* examination is finished, neither the whole nor any portion of his deposition becomes evidence The whole deposition must be read and construed as one, and if a later statement in it is contradictory to or at variance with a prior statement the statement made by the witness must be taken to be the earlier statement as subsequently modified, or the subsequent statement itself, if it intentionally contradicts and thus retracts the earlier. *Habibullah* v. *Queen-Empress* (I. L. R. 10 Cal. 937), considered.—IN THE MATTER OF PALANI PALAGAN, I. L. R., 26 Mad. 55.

6. FALSE EVIDENCE—*Held* that an accused person cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion

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from himself, and concealing his guilt in regard to a crime with which he is charged.—EMPEROR *v.* RAM KHILAWAN, I. L. R., 28 All. 705.

7. FALSE EVIDENCE—One Cheda Lal, whose brother Debi was an accused person, applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first of all be made to identify Debi. The Court assenting to this request, Cheda Lal produced before the Court ten or twelve men, none of whom could be identified as Debi by any of the prosecution witnesses. Upon being asked by the Court where Debi was, Cheda Lal pointed out a man who, upon further investigation, was discovered to be wearing a false moustache, and to be not Debi at all, but one Chimman. *Held* upon these facts that Cheda was rightly convicted of fabricating false evidence, having regard to the definition contained in s. 192 of the Indian Penal Code.—EMPEROR *v.* CHEDA LAL I. L. R., 29 All. 351.

8. FALSE EVIDENCE—Where the accused was convicted and sentenced under s. 193 of the Indian Penal Code (Act XLV. of 1860) of giving false evidence in a judicial proceeding, and where the charge was based on the allegation that in two depositions, one given on the 3rd December 1896 and the other on the 23rd March 1901, the accused had made two contradictory statements, and the case for the prosecution was that on that ground, though it could not be proved which of the alleged contradictory statements was false, the accused's conviction should be upheld. *Held* (by JENKINS, *C.J.*, reversing the conviction and setting aside the sentence in revisional jurisdiction) that, to convict an accused of giving false evidence, it is necessary to show, not only that he has made a statement which is false, but that he also either knew or believed it to be false, or did not believe it to be true. Where it is sought to establish guilt solely on contradictory statements, although the Court "may believe that, on the one or the other occasion, the prisoner swore what was not true, it is not a necessary consequence that he committed perjury; for there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and, from other circumstances at a subsequent time, be convinced that he was wrong, and swear to the reverse without meaning to swear falsely either time."—EMPEROR *v.* BANKATRAM LACHIRAM, I. L. R., 28 Bom. 533.

False Evidence (*contd.*)—

9. FALSE EVIDENCE—A was convicted of giving false evidence in a judicial proceeding. It was proved that, after his evidence had been recorded, his deposition upon which the assignments of perjury were based was read over to him by the Court-clerk, in a place where neither the Judge nor vakils were present. *Held* that the conviction could not be sustained. The deposition, upon which the prosecution was based not being properly taken in accordance with law, should not have been admitted in evidence.—KAMATCHI NATHAN CHETTY *v.* EMPEROR, I. L. R., 28 Mad. 308.

10. FALSE EVIDENCE—Where, with reference to an adoption, the accused made a statement, and where no other expression would with equal propriety have been used to express the corporeal act (of giving and taking in adoption), it is antagonistic to the first principles of criminal jurisdiction to explain away to the prejudice of the accused that statement which, in its legitimate sense, indicated a corporeal giving and taking. *Per* JENKINS, *C. J.*—A conviction for perjury cannot stand where the *onus* has been wrongly placed; explanations have been demanded from the accused when no occasion for them existed: and the rule, that there must be something in the case to make the oath of the prosecution-witness preferable to the oath of the accused, has not been satisfied. For silence to carry incriminating force in a case like the present, there must have been circumstances which not only afforded the accused an opportunity to speak, but naturally and properly called for the declaration, which is said to be absent.—EMPEROR *v.* BAL GANGADHAR TILAK, I. L. R., 28 Bom. 479.

11. FALSE EVIDENCE—*Semble* that, to constitute the offence defined by s. 191 of the Indian Penal Code, it is not necessary that the false evidence should be concerning a question material to the decision of the case in which it is given; it is sufficient if the false evidence is intentionally given, that is to say, if the person making that statement makes it advisedly knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true. *The Queen* v. *Mahomed Hossain* (16 W. R. 37) and *The Queen* v. *Shib Prosad Giri* (19 W. R. 69) referred to. *Emperor* v. *Ganga Sahai* (Weekly Notes, 1903, p. 68) discussed. But, if the false evidence does not bear directly on a

False Evidenee (*contd.*)—

material issue in the case, being relative to incidental or trivial matters only, that would be a matter to be taken into consideration in fixing the sentence.—EMPEROR *v.* BABU RAM, I. L. R., 26 All. 509.

12. FALSE EVIDENCE — *Penal Code ss 192, 193 — Fabricating false evidence — Necessity of finding out the intention.*] In order to convict a person of fabricating false evidence under s 193, Indian Penal Code, it is necessary to find that the person intended that the fabrication may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator. The mere fact that the accused, by falsely representing to the marriage registrar that a marriage had been solemnized, induced the registrar to make a false entry of the registration of the marriage, will not make the accused liable to be convicted under s. 193 in the absence of proof of the intention mentioned above.—MOHAMAD SIDIQ *v.* EMPEROR, 11 C. W. N. 911=6 Cr. L. J. 162.

13. FALSE EVIDENCE—*Penal Code s. 193 —Fabricating false evidence—What must be established to sustain a conviction for—Application for partition—Verification by all co sharer* (including one deceased.] In order to sustain a conviction for fabricating false evidence, it must be established that the accused made a document containing a false statement, that he intended that false evidence should appear in the record of a proceeding taken before a public servant, and that that false evidence might cause any person, who in such proceeding was to form an opinion on the evidence, to entertain an erroneous opinion touching any point mentioned in the result of the proceeding. After an application for partition had been presented by certain co-sharers, a second application was presented on behalf of four other co-sharers, and formed into a separate patti. The application was signed by the pleader only, but purported to be verified by the four co-sharers and their pleader's Vakalatnama authorizing him to present the application also purported to be signed by all the four. As a matter of fact, one of the co-sharers was dead, and his name was signed, both on the vakalatnama and in the verification of the application by his brother the accused. The accused was tried for the offence of fabricating false evidence in respect of both documents. *Held*, that he was not liable to be convicted at all, as the law did not require the verification of the petition.—2 A. L. J. 203.

False Evidencc (*contd.*)—

14. FALSE EVIDENCE *Penal Code s. 193 —What must be proved to sustain a conviction under.*] In order to convict a person under s. 193, the prosecution should prove that the statements made by the accused were false, and were made by him knowing them to be base.—PROKASH CHANDRA *v.* EMPEROR 2 C. L. J 191 = 2 Cr. L. R. 455.

15. FALSE EVIDENCE.—*Examination on oath of person by Magistrate for purpose of obtaining information in order to take proceedings—Whether such person a witness—Contradictory statement made by such person at trial as witness—Criminal Procedure Code (Act V. of 1898), s. 190, cl. (c)—Oaths Act (X. of 1873), s. 5—Penal Code (Act XLV. of 1860), ss. 191, 193.*] *Held* that, where an accused person was examined by a Magistrate for the sake of obtaining information on which proceedings could be taken, the Magistrate, although he might examine him to obtain information, could not legally examine him on oath, nor could the accused be said at that stage of the proceedings to be a witness, even though he were examined on oath. There was no authority that, being so examined the accused was bound by any express provision of law to state the truth. Consequently, any charge for giving false evidence founded on this statement was bad, and it therefore followed that a conviction and sentence founded on this statement as being contrary to another statement made by the accused when examined as a witness at the trial, without any proof or finding that the second statement was false, could not be maintained.—HARI CHARAN SINGH *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 455.

16 FALSE EVIDENCE.—*Penal Code—Act (XLV. of 1860), s. 193—Criminal Procedure Code (Act V. of 1898), ss. 195, 476—Intentionally giving false evidence at a judicial proceeding—Preliminary enquiry by a Magistrate.*] At a preliminary enquiry held by a Sub-Divisional Magistrate, at the direction of the District Magistrate, into the circumstances of a complaint against the police, a witness made a false statement on oath. Notice was subsequently issued calling upon the said witness to show cause why sanction should not be granted for his prosecution. The Magistrate having held that the witness was bound to tell the truth at the said enquiry, and having granted sanction for his prosecution under s. 193 of the Penal Code, *held* that the enquiry before the Magistrate in the course of which the

False Evidence (*contd.*)—

alleged offence was committed was not a judicial proceeding within the meaning of s. 193 of the Penal Code, and the witness could not be convicted under that section. —QUEEN-EMPRESS *v.* VENKATARAMANNA, I. L. R., 23 Mad. 223.

17. FALSE EVIDENCE.—*Penal Code (Act XLV. of 1860), s. 193—Criminal Procedure Code (Act V. of 1898), s. 164—Statement made in the course of a "judicial proceeding"—Statements made before a Magistrate under s. 164.*] *Held* that, where a witness had made one statement on oath, or solemn affirmation before a Third-class Magistrate under s. 164 of the Criminal Procedure Code, and again another and totally inconsistent statement at the trial of the case before a Magistrate of the First Class, he might properly be convicted under the second—if not under the first—paragraph of s. 193 of the Penal Code. *Queen-Empress* v. *Bharma* (I. L. R., 11 Bom. 702), considered and distinguished.—QUEEN-EMPRESS *v.* KHEM, I. L. R., 22 All. 115.

18. FALSE EVIDENCE—*Written statement recorded by police-officer during police-investigation—Admissibility in evidence against person making it—Record—Intentionally giving false evidence—Proof necessary of each statement made—Code of Criminal Procedure (Act V. of 1898), s. 162—Evidence Act (I. of 1872), s. 35—Penal Code (Act XLV. of 1860), s. 193.*] There is nothing in s. 162 of the Code of Criminal Procedure which limits the prohibition of the use of a written statement recorded by a police-officer, as evidence to the matter of the charge which is actually under investigation by the police-officer when the statement is made. The prohibition extends also to the use of such written statement against the person who is alleged to have made the statement. Such a written statement does not come within the description of a record within the meaning of s. 35 of the Indian Evidence Act, nor is it admissible in evidence under that section. It is very irregular in a charge of intentionally giving false evidence to put the whole of a long statement bodily to a witness at once. A conviction on such a charge could be properly had only on proof that the accused person had made to the police-officer each and every statement contained in the document.—ISAB MANDAL *v.* THE QUEEN-EMPRESS, I. L. R., 28 Cal. 348.

19. FALSE EVIDENCE—*Penal Code (Act XLV. of 1860), s. 193—Charge of giving false evidence under s. 193—Trial by First-class Magistrate though facts disclosed of-*

False Evidence (*contd.*)—

fence under s. 194 as well—Jurisdiction—Criminal Procedure Code (Act V. of 1898), s. 530—Trial of an accused by Magistrate not empowered by law.] Certain witnesses made statements in a preliminary enquiry before a Magistrate, in a case of alleged murder, and contradicted those statements at the trial before the Court of Session. The latter then sanctioned their prosecution for giving false evidence in a judicial proceeding, an offence punishable under s. 193 of the Indian Penal Code, and triable by a Magistrate of the first class. The Deputy Magistrate, by whom they were tried, convicted them, and the accused appealed, the appeals being transferred to another Sessions Court for hearing. The Sessions Judge held that inasmuch as the false statements had been made in connection with a charge of murder, the offence for which the accused should have been tried fell under s. 194, Indian Penal Code, and that, in consequence, they could be tried only by a Court of Session and not by a Magistrate of the first class. He considered their trial by a First-class Magistrate to be void under s. 530 of the Code of Criminal Procedure, and set aside their conviction, committing one of them for trial by a Court of Session on a charge under s 194 of the Indian Penal Code, and making no order in respect of the other accused as he considered the imprisonment already undergone was sufficient. *Held* that the order was wrong as the proceedings of the First-class Magistrate were not void within the meaning of s. 530 of the Code of Criminal Procedure. *Queen-Empress* v. *Gundya* (I. L. R., 13 Bom 502) referred to.—KING-EMPEROR *v.* AYYAN, I. L. R., 24 Mad. 675.

20. FALSE EVIDENCE—*Deposition under compulsion—Privilege—Incriminating statements in cross examination made by a party to a suit after objection taken, not by deponent personally, but by his pleader—Admissibility of the statements on subsequent trial for giving false evidence—"Compelled to answer"—Evidence Act (I. of 1872) s, 132, proviso.* An incriminating statement in a deposition made by a party to the suit in cross-examination in answer to questions relevant only as affecting his credit, and objected to, not by the deponent himself but by his pleader, is not admissible against him on his subsequent trial for giving false evidence, he being in fact "compelled to answer" within the meaning of s. 132 of the Evidence Act. Such objection may be taken by Counsel or pleader representing the party. *Thomas* v. *Newton*, I Moo. & M. 48*n*. and *Rex* v. *Adey*, 1 Moo. & Rob. 94, distinguished. *Queen*

False Evidence (*contd.*)—

v. *Gopal Dass*, I. L. R., 3 Mad. 271, explained and distinguished. *Per* TEUNON, J. —When such an objection has been taken and overruled, if any objection or privilege personal to the witness remains, it is still open to him to assert that objection or claim that privilege.—EMPEROR *v.* PRAMATHA NATH BOSE, I. L. R. 37 Cal. 878.

21. FALSE EVIDENCE—*False statements in an application for mutation proceedings —Obligation to make a true declaration therein—Verification of application—Validity of Rules of the Board of Revenue, Chap. V, Rule* (5) *Penal Code* (*Act XLV. of 1860*), *ss. 191, 193—Land Registration Act* (*Beng. Act VII. of 1876*), *ss. 42, 53, 88.*] An applicant for mutation of names under section 42 of the Bengal Land Registration Act is bound by Rule 5, Chapter V., of the Rules of the Board of Revenue, framed under section 88 of the Act, to make a true declaration on the subject of his application, and is punishable under sections 191 and 193 of the Penal Code for making false statements therein. *Debi Saran Misser* v. *Emperor*, (11 C. W. N. 470,) referred to. *Queen-Empress* v. *Appayya*, I. L. R. 14 Mad. 484, *Durga Das Rukhit* v. *Queen-Empress*, I. L. R. 27 Cal. 820, *Ezra* v. *Secretary of State*, I. L. R. 30 Cal. 36, and *British India Steam Navigation Co.* v. *Secretary of State for India*, I. L. R., 38 Cal. 230), distinguished. Rules passed by the Board of Revenue under section 88 of the Act, provided they refer to the procedure as to presentation, admission and verification of an application for registration under Part IV. of the Act, and as to inquiries under section 52 thereof, have the force of law.—NALOO PATRA *v.* EMPEROR, I. L. R. 38 Cal. 368.

False Information—

FALSE INFORMATION—*Complaint—Institution of complaint and necessary preliminaries—Charge of furnishing false information in Land Acquisition proceedings—Omission to refer to particular false statement on which accusation made—Penal Code* (*Act XLV. of 1860*), *s. 177—Land Acquisition Act* (*I. of 1894*), *ss 9, 10.*] A Magistrate issued processes for the attendance of the accused on the complaint of the Land Acquisition Deputy Collector, for having given false information within the terms of s. 177 of the Penal Code and s. 10 of the Land Acquisition Act, in certain written statements that they had made to the Collector. The complaint was that the written statements were false. The documents, however, contained more than one statement of fact. Neither in the complaint made by the Deputy Collector nor in his examination by the Magistrate was any reference made to any particular statement made by either of the accused as being a false statement, nor had the Deputy Collector put in the written statements, upon which he desired to proceed either with his written complaint or at the time of his examination by the Magistrate. *Held* that the complaint was bad, and the case should not be allowed to proceed in its present form. The Magistrate was bound to require from the complainant the written statements on which the proceedings were founded, and also to ascertain from him the particular statement or statements on which the accusation was made.—DURGA DAS RAKHIT *v.* UMESH CHANDRA SEN, I. L. R., 27 Cal. 985.

Falsification of Accounts—

FALSIFICATION OF ACCOUNTS—*Intention to defraud—False entries made to conceal previous embezzlement—Penal Code (Act XLV. of 1860) s. 477A.*] The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of s. 477A of the Penal Code, inasmuch as the intention is to defraud. *Lolit Mohon Sarkar* v. *Queen-Empress*, I. L. R, 22 Cal. 313. *In re Annasami Ayyangar*, 1 Weir 554, followed. *Empress* v. *Jiwanand*, I. L. R., 5 All. 221, *Queen-Empress* v. *Girdhari Lal*, I. L. R., 8 All. 653 and *Abdul Hamid* v. *Empress* (I. L. R., 13 Cal. 349, dissented from.—EMPEROR *v.* RASH BEHARI DAS, I. L. R., 35 Cal. 450.

Ferry—

FERRY — *Private and public ferries—Maintaining a private ferry within two miles from the limits of a public ferry—Limits not declared by the Local Government — Bengal Ferries Act (Beng. I. of 1885) ss. 6, 16, 28.*] When the limits of a public ferry have not been declared by the Local Government under s. 6 of the Bengal Ferries Act, 1885, a conviction under ss. 16 and 28 thereof for maintaining a private ferry, without sanction, to or from any point within two miles of the public ferry, is bad.— MAHARAJ MANDAL *v.* POKAR SINGH, I. L. R., 37 Cal. 543.

Fine—

1. FINE—*Penal Code, s. 70.*] The mere fact that the Magistrate considered the fine imposed to be irrecoverable and wrote it off in his register under the provisions of Rule 60 of the Rules of 14th August 1897, is no bar to his taking action to levy the fine within the time allowed by law.—

Fine (*contd.*)—

LATIF-UL-HASSAN *v.* MUMTAZ ALI KHAN, 3 A. L. J. 818.

2. FINE—*Prospective fine—Municipalities Act (I. of 1900), ss. 132 and 147 and Rule 2 of ss. 128 and 132*]—*Held*, that the imposition of a prospective fine is illegal—MAHADEO PRASAD *v.* MUNICIPAL BOARD, LUCKNOW, 7 Cr. L. J. 454.

3. FINE—*Court Fees Act (VII. of 1870), s. 31—Criminal Procedure Code (Act V. of 1898), s. 545—Order for payment of expenses of prosecution out of fine—Re-payment to complainant of fees paid in Criminal Courts.*] A person who was convicted by a Deputy Magistrate of having caused hurt, was ordered to pay a fine of Rs. 15, and also the complainant's costs of the prosecution. In the month following the conviction, the Deputy Magistrate issued warrant for the collection of Rs. 12-4-0 from the accused, of which Rs. 2-4-0 was levied under s. 31 of the Court Fees Act as Court fees paid by the complainant, and Rs. 10 under s. 545 of the Code of Criminal Procedure for two fees of Rs 5 each paid by the complainant to the medical officer for a certificate and for giving evidence in the case. Objection having been made to the recovery of these sums, the case was referred to the High Court for orders. *Held* that the levy of Court fees was warranted by s. 31 of the Court Fees Act, which is not modified by s. 545 of the Code of Criminal Procedure. *Held also*, that the Deputy Magistrate's order passed under s. 545 of the Code of Criminal Procedure for the payment of expenses incurred in the prosecution was unsustainable, and such expenses could only be awarded to the complainant out of the fine levied from the accused and not in addition to it.—QUEEN-EMPRESS *v.* YAMANA RAO, I. L. R., 24 Mad. 305.

4. FINE—*Daily payment of fine, Order of—Illegality of such order.*] An order for payment of a daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed. *Sagar Dutt* (1 B. L. R. O. Cr. 41), *W. N. Love*, (18 W. R. Cr. 44). *Kristodhone Dutt* v. *Chairman of the Municipal Commissioners of the Suburbs of Calcutta* (25 W. R. Cr. 6), referred to—RAM KRISHNA BISWAS *v.* MOHENDRA NATH MOZUMDAR, I. L. R., 27 Cal. 565.

First Offender—

1. FIRST OFFENDER—*Criminal Procedure Code, s. 562—Power conferred by section not confined to Courts of First Instance.*] The power of passing orders under s. 562 of the Code of Criminal Procedure is not confined to Courts of First Instance. *Emperor* v. *Birch*, (I. L. R., 24 All. 306), approved.—NARAYANASWAMI NAIDU *v.* EMPEROR, I. L. R., 29 Mad. 567.

2. FIRST OFFENDER—*Criminal Procedure Code (Act V. of 1898), ss. 523 (d), 562—Powers conferred by s. 562 exercisable by a Court of Appeal.*] *Held*, that the Powers conferred by s. 562 of the Code of Criminal Procedure upon a Court by which a first offender is convicted, are by virtue of s. 523 (*d*) of the Code, exercisable by the High Court sitting as a Court of Appeal.—EMPEROR *v.* BIRCH, I. L. R., 24 All. 306.

Fishery—

FISHERY—*Dispute relating to a fishery—Whether proceedings should be under s. 107 or s. 145, Criminal Procedure Code (Act V. of 1898).*] Where there is a *bona fide* dispute relating to a fishery right, the proper course for the Magistrate to adopt is to proceed under s. 145 of the Criminal Procedure Code, and not under s. 107. The words in s. 145 are mandatory, while the language of s. 107 is discretionary. *Dolegobind Chowdhry* v. *Dhanu Khan*, (I. L. R., 25 Cal. 559.) followed.—BALAJIT SINGH *v.* BHOJU GHOSE I. L. R., 35 Cal. 117.

Forest—

1. FOREST—*Assam Forest Regulation Act (VII. of 1891), s. 40—Rules—Onus of proof.*] In order to support a conviction for breach of rules 1 and 2 framed under s. 40 of the Assam Forest Regulation, the onus is on the prosecution to prove that the forest produce was being removed along some route other that the two routes prescribed by rule 1. The mere fact of its being found concealed under suspicious circumstances is not sufficient to remove that onus from the prosecution and to throw the burden on the accused of proving that it was on its way for conveyance by an authorized route.—MOTI THAKOOR *v.* DEPUTY CONSERVATOR OF FORESTS, I. L. R., 33 Cal. 895.

2 FORRST—*Assam Forest Regulation Act (VII. of 1891), ss. 33, 34, 35, 63—Trees in possession of lessee.*] The offences committed under ss 33, 34 and the penalty provided under s. 35 of the Assam Forest Regulation (VII of 1891) apply, whether the reserved trees are or are not in direct possession of the Government. So a criminal prosecution instituted at the instance of a lessee from the Government for the infringement of the provisions of s. 33 or of any rules made under s. 34, is a proceeding taken under s. 63.—MANICK CHANDER AGARWALLA *v.* THE EMPEROR, 10 C. W. N. 311.

Forest Act—

FOREST ACT (VII. OF 1878), SS. 25 54—*Conviction for offence under — Subsequent order for confiscation of boats—Confiscation, a punishment—When such order should be made.*] Certain accused persons were tried summarily, and convicted under s. 25 of the Forest Act, and sentenced to pay fines. By a subsequent order under s. 54 of the same Act their boats were confiscated. *Held* that, under the terms of s. 54, an order of confiscation cannot be regarded as an order incidental on the conviction. The confiscation is, by the terms of that section, declared to be a punishment, for it is in addition to any other punishment prescribed for the offence. That, being a punishment, the order should have been passed simultaneously with the other punishment for the offence of which the accused have been convicted. *Empress* v. *Nathu Khan* (I. L. R., 4 All. 417), referred to.—AIUNDDI SHEIKH *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 450.

Forest Offence—

FOREST OFFENCE—*Madras Forest Act—(Act V. of 1882), s. 21 (a)—"Clearing"—Removal of trees or shrubs—Conviction where no evidence of such removal—Validity.*] The word "clearing" as it is used in s. 21 (*a*) of the (Mad) Forest Act of 1882, means something in the nature of the removal of trees or shrubs. Certain accused were convicted of an offence under the section, but there was no evidence on the part of the prosecution to show that there had been any removal of trees or shrubs by the accused, or that cultivation of the land in question could not have been carried on without such removal:—*Held*, that there was no evidence that the accused had committed an act prohibited by s. 21.—EMPEROR *v.* VENKANNA PRABHU, I. L. R, 26 Mad. 470.

Forfeiture—

FORFEITURE—Forfeiture of rents and profits of the property of a convicted person, which is permitted by s. 62 of the Penal Code, should be ordered only in rare cases—those cases in which crimes of an atrocious nature is exposed, or in which offences has been committed under aggravated circumstances. A case of embezzlement is not one contemplated by s. 62 of the Penal Code. *Queen* v. *Mahamed Akhir* (12 W. R. 17, Cr) followed.—AMRIT LAL *v.* EMPEROR, 3 A. L. J. 772.

Forgery—

1. FORGERY—*Penal Code, ss. 465, 467—Proof—Similarity of handwriting.*] Where it is sought to convict a clerk employed in an office of forgery, upon the supposed similarity between his handwriting and that of some fragmentary piece of writing upon which the charge is based, the prosecution should make an attempt to show that the accused is the only man in the office who could have written the forged document. — SRIKANT *v.* EMPEROR, 2 A. L. J. 444.

2. FORGERY—In order to obtain admission to the Matriculation Examination of the Madras University as a private candidate, V. was required to produce to the Registrar a certificate signed by the Head-master of a recognized High School that he was of good character, and had attained his twentieth year. V. fabricated the Head-master's signature to such a certificate, and forwarded it to the Registrar. *Held* (SUBRAHMANIA AYYAR and DAVIES, *JJ.*, dissenting) that V. was guilty of forgery.—KOTAMRAJU VENKATRAYADU *v.* EMPEROR, I. L. R., 28 Mad. 90.

3. FORGERY—*Dishonestly using as genuine a forged document—User—Filing document, but not tendering it in evidence—Penal Code (Act XLV. of 1860), s. 471.*] The mere filing of a document in Court without tendering the same in evidence does not constitute user of it within s. 471 of the Penal Code.—AMBICA PRASAD SINGH *v.* EMPEROR, I. L. R., 35 Cal. 820.

4. FORGERY—*Dishonestly using as genuine Forged document—Falsification of Accounts—Alteration of Accounts—Penal Code (Act XLV. of 1860), ss 465, 471, 477A—Reading over Deposition to witness in the presence of the Accused or his Pleader—Criminal Procedure Code (Act V. of 1898) s. 360 — Practice.*] The alteration of accounts so as to show the receipt of a sum of money criminally misappropriated and in order to remove evidence of such misappropriation, is not an offence either under s. 465 or s. 477A of the Penal Code, there being no intent to commit fraud. *Lolit Mohan Sarkar* v. *Queen-Empress*, I. L. R., 22 Cal. 313, and *Emperor* v. *Rash Behari Das*, I. L. R., 35 Cal. 450. distinguished. Whether or not there is an intent to defraud in any particular case depends on the circumstances of the case. S. 360 of the Criminal Procedure Code is mandatory. The evidence given by a witness must be read over to him in the presence of the accused or his pleader, and no practice to the contrary can alter the plain words of the law.—JYOTISH CHANDRA MUKERJEE *v.* EMPEROR, I. L. R., 36 Cal. 955.

5. FORGERY—*Penal Code (Act XLV. of 1860), ss. 417, 511; 468—Attempting to*

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cheat and forgery—Application to University for duplicate certificate by person not entitled—Offence.] S. held a Matriculation certificate which had been issued to him by a University. C had failed to pass the Matriculation Examination. The Registrar of the University received a letter purporting to be signed by S. stating that his certificate had been lost and requesting that a duplicate might be issued. Enclosed with the letter was what purported to be a certificate by the head-master of a local school, corroborating the statement as to the loss and supporting the application for the issue of a duplicate. This document had not, in fact, been written by the head-master, and S. had not in fact lost his Matriculation certificate. C. was charged with cheating and forgery to commit cheating. The Deputy Magistrate found on the evidence, that the writer of the application for a duplicate certificate was the accused, and convicted and sentenced the accused on both charges. The Sessions Judge, on appeal, altered the offences to those of attempting to cheat and forgery to commit cheating and reduced the sentence. Subject to these modifications he dismissed the appeal. On a revision-petition being filed in the High Court: *Held*, that the charge of cheating must fail, inasmuch as there was no proof that the deception practised by the accused on the Registrar of the University had caused harm or damage to him or to the University which he represented. Nor was it shown that the accused, in applying for the duplicate certificate, had any intention of causing wrongful gain to himself or wrongful loss to the University, to whom he had paid a fee greater than the cost-price of the certificate. The charge of forgery also failed, for, assuming that accused had fabricated the head-master's certificate, it was not shown that he had done so fraudulently or dishonestly, and with intent to cause damage or injury to the public or to any one. The question before the Court was not as to his intended use of the certificate subsequently. Even if he had such an intention this mere preparation did not amount to an attempt to commit an offence within the meaning of s. 511 of the Indian Penal Code.—KING-EMPEROR *v.* C. SRINIVASAN, I. L. R., 25 Mad. 726.

6. FORGERY—*Penal Code, s. 465—Definition—'Fraudulently'.*] One P, the wife of A, left her husband's house. A put in a petition at the police station asking that a search might be made for the missing woman, and he also employed a pleader, one Z to assist him in discovering the whereabouts of P. H, the son of Z, and a clerk employed in the office of the District Superintendent of Police, forged two orders

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purporting to be orders of the District Superintendent of Police, the first intimating that the woman P was with one S, the wife of G, weaver, and that the Sub-inspector should be directed to hand her over to the petitioner (A), and the second directing the Sub-inspector to hand the woman over to the petitioner. *Held*, that in fabricating these two documents, H had acted fraudulently and had committed the offence punishable under s. 465 of the Penal Code. *Queen-Empress* v. *Soshi Bhushan* (I. L. R., 15 All. 210), *Queen-Empress* v. *Abbas Ali*, (I. L. R., 25 Cal. 512), and *Kotamraja Venkatraydau* v. *Emperor* (I. L. R., 28 Mad. 90), referred to.—EMPEROR *v.* ALI HASAN, I. L. R., 28 All. 358; 3 A. L. J. 149.

7. FORGERY—*Penal Code, ss. 466, 471—Using as genuine a forged document—Copies of a forged original.*] Where a person, knowing or having reason to believe that the entries in certain village *khasras* were forged, took copies of those *khasras*, and used them as evidence in his favour in a civil suit, it was *held* that he might be properly convicted of fraudulently or dishonestly using as genuine the *khasras* which he knew or had reason to believe to be forged, and punished under s. 471 read with s. 466 of the Penal Code.—EMPEROR *v.* MULAI SINGH, I. L. R., 23 All. 402; 3 A. L. J. 190.

8. FORGERY—*Making a false document—"Dishonestly or fraudulently", meaning of—Alteration of document in a material part thereof—Affixing one's signature to document not required by law to be attested after execution and registration—Using a forged document—Penal Code (Act XLV. of 1860), ss. 24, 25, 463, 464 and 471.*] Where the accused affixed his signature to a kabuliat, which was not required by law to be attested by witnesses, after its execution, and registration, below the names of the attesting witnesses, but without putting a date or alleging actual presence at the time of its execution: *Held*, that such act did not fall within the first clause of s. 464 of the Penal Code, inasmuch as, although it may have increased the apparent evidence of its genuineness, it was not done "dishonestly" or "fraudulently" within ss. 24 and 25; and further, that it did not justify the inference that he intended it to be believed that the document was made or signed at a time when he knew it was not made or signed, but was consistent with the hypothesis that he intended it to be believed that he would be able, if called as a witness, to prove its genuineness. The expression "*intent to defraud*" implies conduct coupled with an intention to deceive and

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thereby to injure. The word "*defraud*" involves two conceptions, *viz.*, deceit and injury to the person deceived, that is, an infringement of some legal right possessed by him, but not necessarily deprivation of property. *Queen-Empress* v. *Muhammud Saeed Khan*, I. L. R., 21 All. 113; *Queen-Empress* v. *Abbas Ali*, I. L. R, 25 Cal. 512; *Abdul Rajak* v. *Queen-Empress*, P. R. Cr., 2, and *Reg.* v. *Toshack*, 4 Cox C. C. 38, referred to: *Held*, further, that the interpolation of the name of a witness, as an attestor, subsequent to the execution of a document which need not be attested, is not a material alteration thereof within the second clause of s. 464. *Mohesh Chunder Chatterjee* v. *Kamini Kumari Dabia*, I. L. R. 12 Cal. 313; *Venkatesh Prabhu* v. *Baba Subraya*, I. L. R., 15 Bom. 44; *Vazeer Ali* v. *Surya Narain*, 1 Mad. L. J. 388; *State* v. *Gherkin*, 7 Iredell N. C. 206; *Blackwell* v. *Lane* 4 Dev. & Bat. 113; 32 Am. Dec. 675, approved. *Suffel* v. *Bank of England*, 9 Q. B. D. 555, and *Reg.* v. *Asplin*, 12 Cox. C. C. 391, explained and distinguished. *Sitaram Krishna* v. *Daji Devaji*, I. L. R., 7 Bom. 418; dissented from. The test of the materiality of an alteration in a document is not an addition stating a falsehood made expressly or by implication, in order to increase the apparent evidence of its genuineness, but one which alters the legal identity or character of the instrument either in its terms or in the relation of the parties to it.—SURENDRA NATH GHOSE *v.* EMPEROR, I. L. R., 38 Cal. 75.

9. FORGERY—*Penal Code (Act XLV. of 1860), ss. 466, 471—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for the use.*] *Held* that a person who, being himself the forger thereof, has used as genuine a forged document cannot be punished as well under s. 471 of the Indian Penal Code for the use as under s. 466 for the forgery.—QUEEN-EMPRESS *v.* UMRAO LAL, I. L. R., 23 All. 84.

Fraudulent Removal of Property—

FRAUDULENT REMOVAL OF PROPERTY—*Penal Code, s. 424—Dishonest removal by tenants of crops—Ryots holding on varam tenure—Crops in possession of ryots—No taking out of possession—Offence.*] If ryots holding land on varam tenure remove crops for the purpose of protecting them from injury or damage owing to delay or refusal on the part of the Zemindar to perform his part in the harvesting or division, such a removal would not be dishonest within the meaning of s. 424 of the Indian Penal Code. But, where it is proved that the crops have been removed

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dishonestly or fraudulently, an offence is committed under s. 424, even though the Zemindar, under the terms of the tenancy, acquires no property in the share due to him until the ryots have delivered it to him. — SUBUDHI RANTHO *v.* BALARAMA PUDI, I. L. R., 26 Mad. 481.

Fraudulent Transfer of Property—

FRAUDULENT TRANSFER OF PROPERTY—*Penal Code, s. 206—Transfer of attached property.*] *Held* that there is nothing whatever in law to prevent a judgment-debtor from disposing of his interest such as it may be in an attached debt. The Court has no right to presume a fraudulent intent because a person does what he is legally entitled to do.—RAM NARAIN *v.* JOKHAI RAM, 3 All. L. J. 1.

Fresh Trial after Discharge—

1. FRESH TRIAL AFTER DISCHARGE—*Magistrate—Conviction—Offence exclusively triable by Court of Session—Accused, discharge of, by Sessions Judge on appeal—Re-trial, no order for—Re-trial and commitment of accused—Jurisdiction—Criminal Procedure Code (Act V. of 1898), ss. 215, 403, 423, and 530—Indian Post Office Act (VI. of 1898), s. 52.*] Where an accused was convicted by a Magistrate of an offence exclusively triable by a Court of Session, and on appeal the Sessions Judge, without ordering further proceedings to be taken, set aside the conviction and discharged the accused on the ground that the Magistrate had no jurisdiction to hold the trial and fresh proceedings in respect of the same offence were taken by another Magistrate against the accused, who was committed for trial to the Court of Session: *Held*, that where a Sessions Judge on appeal is empowered to order the re-trial of an accused person and does not do so, but merely discharges him, there is nothing in law to prevent a Court of competent jurisdiction from instituting fresh proceedings against the accused and committing him. *Held*, further, that inasmuch as s. 423 of the Criminal Procedure Code contemplates an order for a retrial by a Court of competent jurisdiction, and the trial in this case had been set aside owing to the Magistrate having had no jurisdiction to hold it, no trial had in fact taken place, so that the Sessions Judge could not possibly have ordered a re-trial.—ABDUL GHANI *v.* EMPEROR, I. L. R., 29 Cal. 412.

2. FRESH TRIAL AFTER DISCHARGE—*Accused, discharge of—Warrant case—Process, re-issue of, against accused in respect of the same offences—Magistrate, powers of Provincial or Mofussil—Whether order for further inquiry necessary before re-issue of*

Fresh Trial after Discharge (*contd.*)—

process — Judgment — Criminal Procedure Code (Act V. of 1898), ss. 253, 367, 369, 403, and 437.] *Held*, by the Full Bench (GHOSE, J dissenting) that a Magistrate in a warrant-case having passed an order of discharge is competent to take fresh proceedings and issue process against the accused in respect of the same offence without an order for further inquiry being passed under s. 437 of the Criminal Procedure Code, having the effect of setting aside such order of discharge. *Dwarka Nath Mondul* v. *Beni Madhab Banerjee* (I. L. R., 23 Cal 652) referred to. GHOSE, J.—An order of discharge when once made by a Magistrate can only be altered and the prosecution revived by an order of a Superior Court. The order of discharge made by the Magistrate in this case did not amount to a judgment within the meaning of s. 369 or s. 367 of the Criminal Procedure Code, as there was no judicial investigation by the Magistrate of the merits of the complaint, and therefore the order of discharge was not a bar to the revival of the same complaint.—MIR AHWAD HOSSEIN *v.* MAHOMED ASKARI, I. L. R., 29 Cal. 726.

Further Inquiry—

1. FURTHER INQUIRY—*Security for good behaviour—Criminal Procedure Code, s. 110.*] A District Magistrate has no power under the law to order a further inquiry in a proceeding under s. 110 of the Criminal Procedure Code after setting aside, on appeal an order passed by a Subordinate Magistrate directing the accused to furnish security for good behaviour—DAYANATH TALUKDAR *v.* EMPEROR, I. L R, 33 Cal. 8.

2. FURTHER ENQUIRY—*Criminal Procedure Code (Act V of 1898), ss. 203, 437 and 439—Complaint, dismissal of—Presidency Magistrate—Jurisdiction of High Court to order further enquiry on the merits—Charter Act (24 and 25 Vict., c. 104), s. 15*] Where a complaint has been dismissed by a Presidency Magistrate under s. 203 of the Criminal Procedure Code, the High Court has no power to direct a further enquiry under ss. 437 and 439 of the Code, but only under s. 15 of the Charter Act (24 and 25 Vict, c. 104). The question of the propriety or the impropriety of the order of dismissal does not strictly come within the authority vested in the Court thereunder.—DEBI BUX SHROFF *v* JUTMAL DUNGARWAL, I. L R. 33 Cal. 1282.

3. FURTHER INQUIRY—*Criminal Procedure Code, s. 437—Revision—Lower Court having concurrent jurisdiction in revision with the High Court.*] Where the Magistrate of the District dismissed a complaint under the provisions of s. 203 of the Code of Criminal Procedure, the High Court declined to entertain an application by the complainant asking for further inquiry under s 437 of the Code, when no application for that object had been made to the Sessions Judge.—GULLAY *v.* BAKAR HUSAIN, I. L. R., 28 All 268.

Further Inquiry (*contd*)—

4. FURTHER INQUIRY—*Accused, Conviction of—Offence not charged—Other persons not before Magistrate—Criminal Procedure Code (Act V. of 1898), ss. 203, 204, 437—Penal Code (Act XLV. of 1860), ss. 144, 426*] On a complaint made to the Deputy Magistrate, he convicted one of the accused, H, of mischief. On application made to the Sessions Judge, he directed a further inquiry to be made by the Magistrate into another offence, under s. 144 of the Penal Code, in respect of H, no charge of any such offence having been made at any time against him. The Sessions Judge also directed a further inquiry against other persons, who apparently were mentioned in the complaint, but who had not been summoned to appear before the Magistrate. *Held* that the order of the Sessions Judge was without jurisdiction, not being within the powers described by s. 437 of the Criminal Procedure Code.—HAR KISHORE DASS *v.* JUGUL CHUNDER KABYARATHNA BHUTTACHARJEE, I. L. R., 27 Cal. 658.

5. FURTHER INQUIRY—*Proceedings for taking security for good behaviour—Discharge of person called upon—Further inquiry, Power to order, in such proceedings—Criminal Procedure Code (Act V. of 1898), ss. 110, 437.*] A further inquiry cannot be made into the case of a person against whom proceedings under s 110 of the Criminal Procedure Code have been taken, and who has been discharged. If it be considered by the Magistrate that it is necessary to institute further proceedings, he is competent to do so under the law, on fresh information received. The further inquiry which can be ordered under s. 437 of the Criminal Procedure Code is into a complaint which has been dismissed, or into the case of any accused person who has been discharged. Proceedings under s. 110 of the Criminal Procedure Code cannot be regarded as on a complaint, nor can they be regarded as a case in which any accused person has been discharged for the terms 'accused person" and "discharge" in s 437 of the Criminal Procedure Code clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch. XIX. of the Code.—QUEEN-EMPRESS *v.* IMAN MONDAL, I. L. R, 27 Cal. 662.

Further Inquiry (*contd.*)—

6. FURTHER INQUIRY—*Power to direct further inquiry against a person not named in the complaint nor before the Court—Notice, necessity of—Criminal Procedure Code (Act V. of 1898), s. 437.*] The Court has no jurisdiction to direct a further inquiry, under s. 437 of Criminal Procedure Code, in respect of a person who was not named in the complaint and against whom no other regular process has been issued. An order under s. 437 of the Code made without previous notice to the accused is bad in law. *Giridhari Marwari* v. *Emperor*, 12 C. W. N. 822, followed.—AMBAR ALI *v.* ANJAB ALI, I L. R., 39 Cal. 238.

7. FURTHER INQUIRY—*Criminal Procedure Code, ss. 254, 437—Revision.*] The Magistrate, after the evidence for the prosecution had been gone into, gave the accused benefit of doubt and discharged him. *Held* that the District Magistrate was not competent to order a further inquiry on the ground that the trying Magistrate had acted wrongly in giving the accused benefit of doubt before charge was framed and the case was heard fully. No charge should be framed when there are grounds for doubt as to the guilt of the accused.—MUL CHAND *v.* KING EMPEROR, 2 P. R. Cr., 37 P. L. R. 1906.

G.

Gambling—

1. GAMBLING—*Bom. Act IV. of 1887, ss. 3, 4, and 5—Instruments of gaming—Books and telegrams—Game—Procedure—Police-officer investigating offence not to conduct prosecution—Criminal Procedure Code (Act V. of 1898), ss. 495, cl. (4) and 537.*] The accused was partner in a shop at Surat in which he ostensibly carried on a *satta* or wagering business. The wagers were made with regard to the last unit of the figures denoting the prices for which opium was sold at Calcutta on a given day. Information as to these sales was received by telegraph from Calcutta. The firm kept books in which the wagers were recorded. The accused was convicted and sentenced under ss. 4 and 5 of Bom. Act IV. of 1887. *Held*, by CANDY and FULTON, JJ., (confirming the sentence under s. 4), that the books kept by the firm for tne purpose of recording the wagers were instruments of gaming within the definition of s. 3 of Bom. Act IV. of 1887. *Held*, by CANDY, J., that the telegrams received and used for the purpose of determining the result of the bets were also within the definition. *Held*, also, (setting aside the conviction under s. 5) that the wagering with which the accused was charged was not a "game" and the presumptions under s. 7 and cl. (2) of s. 5 of the Act did not apply. A Police Inspector, who has taken part in the investigation into an offence, is not qualified to conduct the prosecution of the person charged with that offence (Criminal Procedure Code, Act V. of 1898, s. 495, cl. 4).—EMPEROR *v.* TRIBHOVANDAS BRIJBHUKANDAS, I. L. R., 26 Bom. 533.

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2. GAMBLING—*Prevention of Gambling Act (Bom. Act IV. of 1887), s. 8—Power of seizing money 'found therein'—Interpretation.*] The power of seizing money found in a gaming house under s. 8 of Bom. Act IV. of 1887 does not extend to money found on the persons of those who may at the time be in such gaming house.—EMPEROR *v.* WALLI MUSSAJI, I. L. R., 26 Bom. 641.

3. GAMBLING—*Public place—Osara or verandah—Gambling Act, (Bengal Act, II. of 1867), s. 11.*] The accused were convicted under s. 11 of the Gambling Act, II. (B. C) of 1857, of Gambling in a public place. The place where the gambling was held was an *osara* or verandah, which was enclosed on all sides, but having doors opening towards the road and having a platform between the *osara* and the road. It was a part of a building, which was the private property of certain individuals, and was used during the day as a shop; but not so in the night. The gambling in question took place after midnight *Held*, setting aside the convictions, that the *osara* was not a public place within the meaning of s. 11 of the Gambling Act.—DURGA PRASAD KALWAR *v.* EMPEROR, I. L. R., 31 Cal. 910.

4. GAMBLING—*Sham horse-racing machine—Instrument of gaming—Compound of house—Public place—Gambling Act (Bengal Act II. of 1867).*] The accused played a game of sham horse-racing known as "little horses" by means of a machine. Which horse won was a pure matter of chance. The public staked their money on any of the horses before the machine was started. The accused appropriated all the stakes, returning four times their stakes to those, who had staked their money on the winning horse. The game was played in the compound of the Sanjoy Press consisting of an open space of land without any fence situated one cubit from the bazar. There was no evidence that the owner ever gave or refused permission to any one to come on his compound or that any one asked his

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permission to do so or that any one was prevented doing so by him. *Held*, the accused was rightly convicted under s. 11 of the Bengal Gambling Act, II. of 1867. The difference between gaming and betting discussed. *The Queen* v. *Wellard*, L. R. 14 Q. B. D. 63; *Turnbull* v. *Appleton*, 45 J. P. 469; *Queen-Empress* v. *Sri Lal*, I. L. R, 17 All. 166; *Khudi Sheikh* v. *The King Emperor*, 6 C. W. N. 33 *Queen-Empress* v. *Narottamdas Motiram*, I. L. R., 13 Bom. 681, referred to.—HARI SINGH *v.* JADU NANDAN SINGH I, L. R, 31 Cal. 542.

5. GAMBLING—*Bombay Prevention of Gambling Act (Bombay Act IV. of 1887), ss. 4, 5, 6, 7—Keeping a common gaming house—Applicability of presumption under s. 7 to cases under s 4—Warrant under s. 6—Delay in executing the warrant—Previous conviction—Criminal Procedure Code (Act V. of 1898), s. 342—Evidence Act (Act I. of 1872), ss. 11, 54*] On the 19th May, 1903, a warrant was issued by the Commissioner of Police at Bombay, under s. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887), for the arrest of accused 1. In execution of this warrant, when, on the 7th June, 1903, the police entered the room of accused 1, no actual play was seen by the raiding party, but there were found playing cards on the ground and ten persons, including accused 1, were found sitting in a circle. Upon these facts the Magistrate convicted the accused of keeping a common gaming house, an offence under s. 4 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887), by applying to him the presumption created by s. 7 of the Act; and taking into consideration the previous convictions of the accused under the Act, he sentenced him to pay a fine of Rs. 500, the maximum amount of fine allowed by the section. On appeal to the High Court, *Held*, by CHANDAVARKAR AND ASTON, *JJ.* (JACOB, J., dissenting), affirming the conviction, (1) that the presumption created by s. 7 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) could be applied to cases falling under s. 5 as well as to those falling within the purview of s. 4 of the Act. (2) That the applicability of s. 7 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) was affected by the fact that a considerable interval had elapsed between the issue of a warrant under s. 6 of the Act and the execution thereof: (3) That the evidence that the accused had been previously convicted of the same offence was admissible to show guilty knowledge or intention. *Held*, by JACOB, J., dissenting, (1) that the presumption created by s. 7 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) is sufficient for the purposes of s. 5 of the Act. It is also sufficient for the purposes of s. 4 (*a*) so far as regards the fact that the house, &c., is so used, but it is not alone sufficient for the purpose of showing that the house was so kept or used by any specified person. (2) That in a trial for an offence under s. 4 (*a*) of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887), the evidence that the accused was previously convicted of a similar offence cannot be admitted either under s. 54 or s. 11 of the Evidence Act (I. of 1872). (3) That the question whether the delay, between the issue of a warrant under s. 6 of the Act and its execution, has been reasonable or otherwise is one which must be decided with reference to the circumstances of each case—EMPEROR *v.* ALLOOMIYY HUSAN, I. L. R., 28 Bom. 129.

6. GAMBLING—*Bombay Prevention of Gambling Act (Bom. Act IV. of 1887) ss. 3, 4, 12—Gambling in a machhwa—Public place—Bombay Harbour.*] The accused, fourteen in number, chartered a *machhwa* (boat), and, having got it anchored in the Bombay Harbour a mile away from the land, carried on gambling there. For this they were convicted of an offence under s. 12 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) for gaming in a public place: *Held*, that the accused were not guilty of an offence under s. 12 of the Act, since they cannot be said to be gambling in a public place. *Per* BATTY, *J.*:—The word "place" which is patient of many different meanings, must necessarily, in each instance in which it is used by the Legislature, be construed with reference to the intention to be inferred from the context Thus in s. 12 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) or in s 3 of 36 and 37 Vict., c. 38, in connection with such words as roads, streets and thoroughfares, it has a very different meaning from that which it bears in s. 4 of the Act, and from that given to it in connection with s. 3 of 16 and 17 Vict., c. 119, by judicial decisions. The mischief aimed at in s. 4 of the Act is a mischief clearly distinct from that aimed at in s. 12 of the Act. In the former, the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection known as a place where gambling is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent. In the latter, the offence is not that the individual members are making a profit at

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all but simply that they are carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed—if his inclinations lie that way—to join in or follow the bad example openly placed in his way. In the one case comparative privacy for profit, in the other the bad public example and accessibility to the public, would seem to constitute the gravamen of the offence. S. 12 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) aims at gambling *in* a public place or thoroughfare, ordinarily with no intervening obstruction to the public view, where there is voluntary publicity.—EMPEROR *v.* JUSUB ALLY, I. L. R., 29 Bom. 386.

7. GAMBLING—*Bombay Prevention of Gambling Act (Bombay Act IV. of 1887), ss. 3, 4 (a)—Instrument of gaming—Single page of paper used for registering wagers.*] The expression "instruments of gaming" as defined in s. 3 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) includes a single page of paper used for registering wagers.—EMPEROR *v.* LAKHAMSI, I. L. R., 29 Bom. 264.

8. GAMBLING—*Gambling Act (Bom. Act IV. of 1887), ss. 4, 5, 7—Common gaming house—Jamatkhana of the Borah community.*] The accused were found playing for money with cards in a building ordinarily used as a *Jamatkhana*, but accessible to such members of the Borah community as have no place to live in and are too poor to afford the rent of a room. This place was frequented by the petitioners and others and instruments of gaming were found there when the accused were arrested. The Magistrate convicted the accused of offences under ss. 4 and 5 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887); *Held*, that it was open to the Magistrate to rely on the presumption which under s. 7 of the Act might be drawn that this place was used as a common gaming house unless the contrary was made to appear by the evidence before him: there was, therefore, no ground to interfere in revision with the convictions under s. 5 of the Act. *Held*, further, that no presumption arose under s. 7 of the Act that the place was "kept" by any person as a common gaming house: the conviction under s. 4 was therefore wrong. In order to constitute an offence under s. 4 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1887), of keeping a common gaming house, it is necessary to show, in the first place, that the person charged with that offence is the owner, or occupier, or, a person "having the use" of the place

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alleged to be kept as a common gaming house. It is not sufficient to show that the accused used the place in question for the purpose of gaming there.—EMPEROR *v.* WALIA MUSAJI, I. L. R., 29 Bom. 226.

9. GAMBLING—*Prevention of Gambling Act (Bom. Act IV. of 1887), s. 12—Gambling in a railway carriage—Through special train—Public place—Railway track—Public having no right of access except Passengers.*] The accused were convicted under s. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1887) as persons found playing for money in a railway carriage forming part of a through special train running between Poona and Bombay while the train stopped for engine purposes only at the Reversing station (on the Bore Ghauts between Karjat and Khandala Stations) of the Great Indian Peninsula Railway, *Held*, reversing the conviction, that a railway carriage forming part of a through special train is not a public place under s. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1887). *Per* JENKINS, *C. J.*:—The word "*place*" [in s. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1877) is, I think, qualified by the word "public" and having regard to its context and its position in that context, it must, in my opinion, mean a *place* of the same general character as a *road* or *thoroughfare*..... I am unable to regard the railway carriage in which the accused were, as possessing such characteristics of, or bearing such a general resemblance to, a street or thoroughfare as to justify us in holding that it was a public place within the meaning of s. 12 of the Act, with which alone we are concerned. *Per* RUSSELL, *J.*—The adjective "public" [in s. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV. of 1887] applies to all the three nouns—street, place or thoroughfare, and it is clear that the railway line certainly cannot be described as a "public street or thoroughfare" inasmuch as it is not and cannot be used by the public in the same way as they are in the habit of using "public streets" and "thoroughfares"—EMPEROR *v.* HUSSEIN, I. L. R., 30 Bom. 348; 8 Bom. L. R. 22.

10. GAMBLING—*Gambling Act (III. of 1867), ss. 4, 5, 6—Common gaming house—Evidence—"Credible information."*—*Held* that when a house is searched by the Police on information that it is a common gaming house, the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming house notwithstanding that the warrant

Gambling (*contd.*)—

under which the search is conducted is defective, though the finding of such articles may not be evidence to the extent mentioned in s. 6 of Act III. of 1867. *Held* also that the words "credible information" as used in s. 5 of Act III. of 1867 have not the same meaning as "credible evidence." The "credible information" there mentioned need not be in writing.—EMPEROR *v.* ABDUS SAMAD, I. L. R., 28 All. 210.

11. GAMBLING—*Bombay Prevention of Gambling Act (Bom. Act IV. of 1887), ss. 4, 5, 6, 7—Keeping a common gaming-house—Presumption under s. 7 of the Act—Criminal Procedure Code (Act V. of 1898), s. 65, 105.*] The complainant, an Abkari Sub-Inspector, having come to know that gambling was then actually going on in the house of the accused, communicated the information to the District Magistrate, whom he met on the road. The District Magistrate desired the complainant to go and stand before the house and ordered him to enter the house and arrest the persons gambling there on sight of the District Magistrate's carriage at the spot. The complainant did so; and on a signal by the District Magistrate entered the house and arrested the accused with cards and money. During the trial, the District Magistrate was not examined as a witness. The trying Magistrate convicted the accused for offences under the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887), applying to them the presumption arising under section 7 of the Act: *Held*, reversing the conviction and sentence, that the Magistrate erred in applying to the accused the presumption arising under section 7 of the Act. The presumption under section 7 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) arises only where there has been an arrest and a search under section 6 of the Act. As a First Class Magistrate has, under section 6 of the Act, power to give authority under a special warrant to a police officer of the class designated in the section to make the arrest and the search, the Legislature must be presumed to have intended that the Magistrate, First Class, should have the authority to make the arrest and the search himself, if necessary. Where the Bombay Prevention of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the person to whom and the conditions

Gambling (*contd.*)—

under which such warrant may be issued can apply for the purposes of section 7 of the Act. The authority, the persons and the conditions must be respectively those specifically mentioned in section 6 of the Act and no other. But the special provision in section 6 would still be subject to the general provisions of sections 65 and 105 of the Code. When a Magistrate, First Class, or other officer mentioned in section 6 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) himself acts under its provisions, instead of acting through an officer of the particular class prescribed therein under a special warrant, he must act strictly in compliance with those provisions. The first condition necessary to make an arrest and seizure under the section legal so as to bring in the operation of section 7 is that where the Magistrate is acting on information, there must be a complaint made before him *on oath* to set him in motion. When a Magistrate, First Class, or other officer mentioned in section 6 himself does the acts specified in clauses (1) to (3) of the section instead of issuing a special warrant, he must give evidence, because he supplies the place of the warrant and the warrant is a necessary part of the evidence for the prosecution. Where a Magistrate, First Class, himself makes an arrest and seizure under section 6 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) he must himself "enter" the "house, room or place" with the assistance of such persons as may be found necessary. Section 6 of the Bombay Prevention of Gambling Act (Bombay Act IV. of 1887) must be construed strictly because section 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. *Imperatrix* v. *Suòhabatta*, Unrep. Cri. Cas. 825: Cri. Rul. 68 of 1895, followed.—EMPEROR *v.* FERNAD, I. L. R., 31 Bom. 438.

Good Behaviour—

GOOD BEHAVIOUR—*Security for—General repute—Locus pœnitentiæ—Criminal Procedure Code (Act V. of 1898) ss. 110, 118.*—The petitioner was imprisoned for one year on failure to furnish security for his good behaviour under s. 110 of the Criminal Procedure Code. About fifteen months after his release from Jail fresh proceedings of the same nature were started against him and he was again ordered to furnish security to be of good behaviour. *Held*, that the order should be set aside as the petitioner had not had a sufficient *locus pœnitentiæ*.—JUNAB ALI *v.* EMPEROR, I L. R. 31 Cal. 783.

Grievous Hurt—

GRIEVOUS HURT.—Three persons attacked a fourth with lathis, and one of the assailants struck a blow which fractured the skull of the person attacked, and caused his death, but the evidence left it in doubt as to which of the three assailants struck that blow. *Held* that the offence of which the three assailants were guilty was grievous hurt rather than culpable homicide not amounting to murder. *Queen-Empress* v. *Duma Baidya* (I. L. R., 19 Mad. 438) followed.—EMPEROR *v.* BHOLA SINGH, I. L. R., 29 All. 282.

H.

Habeas Corpus—

1. HABEAS CORPUS—*Right of appeal from order refusing to issue writ of—Judgment not being order passed in criminal trial—Powers of High Court hearing reference under s 307 of the Criminal Procedure Code—Jurisdiction to commit European to jail—Letters Patent, 1865, cls. 15, 25, 26 27, 28,—Code of Criminal Procedure (Act V. of 1898), ss. 307, 383, 491 and 546—Prisoners Act (III. of 1900), ss. 7, 8, and 9—Judicature Act, 1873 (36 and 37 Vict., c. 66), ss. 19 and 47.*] *Held*, by the Full Bench that the Provisions in cl. 15 of the Letters Patent allowing an appeal apply to criminal as well as civil cases and that an order of a single Judge of the High Court made in the exercise of its ordinary original criminal jurisdiction, refusing an application by a prisoner under ss 456 and 491 of the Code of Criminal Procedure for release from alleged illegal custody under a sentence of imprisonment passed by a Divisional Bench of the Court, is a judgment, not being a sentence or order passed or made in any criminal trial, within the terms of cl. 15 of the Letters Patent, and an appeal lies from such order to the High Court. *Held*, further, that the jurisdiction which the High Court exercises in hearing a case submitted to it under s. 307 of the Criminal Procedure Code is not its original criminal jurisdiction, but it hears the case as a Court of Reference in the exercise of the jurisdiction vested in it by cl. 28 of the Letters Patent, which is co-extensive with its Appellate Jurisdiction.—IN THE MATTER OF HORACE LYALL, I. L. R., 29 Cal. 286.

2. HABEAS CORPUS—*High Court, jurisdiction of—Extradition Proceedings, jurisdiction of High Court in—Code of Criminal Procedure (Act V. of 1898), s. 491—Indian Extradition Act (XV. of 1903), s. 3, sub-ss. (3), (4), (6), (7) and (8) and s. 4, sub-s. (1)—Evidence Act (I. of 1872), if exhaustive—English Extradition Act (33 and 34 Vict. c. 52), part of the lex fori—Foreign Records, authentication and admissibility of—Copy of document proved in Foreign Court, if admissible—Deposition taken in absence of accused—Evidence of offence on which Magistrate may act—Arrest, irregularity of, if vitiates proceedings otherwise regular—Magistrate, who may be chosen by Government—Government of Bengal, if can issue order on requisition made to Government of India—If such order can be ratified by Government of India—Fresh proceedings, legality of, whilst previous ones pending—Magistrate, if can record evidence after sending report to Government—Refusal of reasonable opportunity to fugitive to produce evidence, whether affects jurisdiction of Magistrate.*] It must be shown clearly that a supreme right such as that to *habeas corpus*, or to directions in the nature of that writ, has been expressly if that be possible to the Legislature) taken away. There is no such express provision in the Indian Extradition Act. The English Extradition Act did not give the right to *habeas corpus*. It merely declared a right which is created independently of that statute. *In re Siletti*, 87 L. T. 332 71 L J K B 935; and *Ex parte Besset*, 6 Q. B. 481, followed. When a person appears before the High Court and says that he is illegally detained, the High Court can enquire whether the warrant for his custody was validly issued in extradition proceedings. If the provisions of the Legislature have not been carried out, the High Court can interfere, notwithstanding that the warrant has been given in extradition proceedings. *Rudolf Stallmann* v. *Emperor*, I. L. R., 38 Cal. 547, distinguished. S. 3, sub-s. (6) of the Indian Extradition Act, 1903, is not a substitute for, and does not interfere with, proceedings taken under s. 491 of the Code of Criminal Procedure, 1898, the provisions of which are as much binding as those of the Extradition Act. The Indian Evidence Act (I of 1872) does not contain the whole law of evidence governing this country. Under s. 2, which saves certain rules of evidence, the English Extradition Act, which is applicable to this country, is part of the *lex fori*. Records, therefore, of the Berlin Court, which are authenticated in the manner prescribed by ss. 14 and 15 of the English Extradition Act, can be properly admitted in evidence. A *copy* of a document (*Bill*), the *original* of which was proved in the German Court, is admissible as part of the records of the German Court. There may however be cases in which the production of the original document may be necessary for the enquiry in this country. If there is evidence before the Magistrate, the fugitive criminal cannot ask the Court to determine whether a *prima facie* case has been properly found on such evidence. *In re Siletti*, 87 L. T. 332; 71 L. J. K. B.

Habeas Corpus (*contd.*)—
935, followed. The High Court will not sit in appeal to review and weigh the evidence. It is sufficient that there should be some evidence of the offence upon which the Magistrate may reasonably act. Any irregularity in the original arrest of the accused is immaterial, provided that the subsequent proceedings have been right. *R.* v. *Weil*, 9 Q B D. 701; 15 Cox C C. 189, followed. The substantial question is not how the accused is brought into Court, but whether the Court which enquired into his case had jurisdiction to do so. The Government of India may issue its order to *any* Magistrate, and such Magistrate may issue a warrant, provided he is one who has jurisdiction to enquire into the crime of the nature of that for which extradition is sought. Therefore, an enquiry into the case of a fugitive criminal under arrest in Calcutta can be made by the Magistrate of Alipore, if duly authorised. An order issued under s. 3, sub-s. (*1*) of the Indian Extradition Act, 1903, by the Government of *Bengal* upon a requisition made to the Government of *India* is invalid and cannot be "ratified" by a subsequent order of the Government of *India*. Where, however, the latter order directs the Magistrate in pursuance of the former order "and of the statutory provisions in that behalf to enquire into the said case," the Government gives valid effect to its intention, and the Magistrate has jurisdiction to enquire. Under s. 528 of the Code of Criminal Procedure, 1898, the District Magistrate can transfer to his own file, from that of the Deputy Magistrate, an application by the fugitive criminal for return of his property. The Magistrate making the enquiry under s. 3 of the Indian Extradition Act, 1903, can initiate fresh proceedings notwithstanding proceedings taken under a previous order. When the Magistrate sends up his report to the Government of India under s. 3, sub-s. (*b*) of the Indian Extradition Act, 1903, he becomes *functus officio*, and renders himself incapable, therefore, of recording evidence that may be subsequently produced. The Legislature intended that the fugitive criminal should be given an opportunity of defence. If such opportunity is not given, it goes to the jurisdiction of the Magistrate. The enquiry, therefore, is not according to law, and the issue of the warrant is itself invalid. If the Magistrate suspected that the accused had no evidence, it is open to him to question the accused. If the latter stood on his right not to answer, the Court might draw such inference as the refusal to reply and the circumstances of the case suggested. *Per* MOOKERJEE, *J.* The burden lies very heavily upon those who assert that a right

Habeas Corpus (*contd.*)—
of so much importance to the criminal as *habeas corpus*, given by the Common Law, has been taken away by implication. S. 491 of the Code of Criminal Procedure, 1898, is applicable to cases under the Indian Extradition Act. *Rudolf Stallmann* v. *Emperor*, I. L. R., 38 Cal. 547, distinguished. The jurisdiction of the High Court has not been taken away merely because the Government of India has already issued a warrant for surrender under s. 3, sub-s. (*8*) of the Indian Extradition Act, 1903. Depositions which have not been taken in the presence of the accused may be admitted by the Magistrate: *In re Counhaye*, L. R. 8 Q. B. 410. Where there is no evidence before the Magistrate, the Court will interfere. *R.* v. *Maurer*, 10 Q. B. D. 513, approved of. The Court will not consider questions regarding evidence, unless the objection is such that if effect were given to it, there would be no evidence left upon which the order for extradition could be supported. Under s. 4, sub-s. (*1*), the Magistrate may issue a warrant when the person to be arrested is within his jurisdiction. S. 4 merely provides a preliminary procedure. Under it an arrest may be effected before the receipt of the requisition mentioned in s. 3, otherwise the criminal might escape. The two sections do not overlap. Under s 3, sub-s (*1*) of the Indian Extradition Act, 1903, the only Government competent to issue the order for enquiry is the Government to whom the foreign state has made a requisition. This function must be performed strictly, and cannot be delegated. Where the provisions of the statute have not been followed, the report of the Magistrate cannot afford a foundation for the order of the Government of India under s. 3 of the Indian Extradition Act, 1903.—IN THE MATTER OF RUDOLF STALLMANN, I. L. R., 39 Cal. 164.

Harbouring an Offender—

HARBOURING AN OFFENDER—*Acts—1860—(XLV. Indian Penal Code), s. 216B—Definition—Meaning of the term "harbouring."*] *Held*, with regard to the definition contained in s 216B of the Indian Penal Code, that the words 'assisting a person in any way to evade apprehension" are meant to point out some method *ejusdem generis* with those specified in the earlier portion of the section. They will not include the assisting of an accused person to escape by merely telling lies to the police as to his whereabouts.—EMPEROR *v.* HUSAIN BAKHSH, I. L. R., 25 All. 261.

High Court—

1. HIGH COURT—*Criminal Revisional Jurisdiction of—Order by a first-class*

High Court (*contd.*)—

Magistrate for discontinuance of a house as a brothel—Criminal Procedure Code (Act V. of 1898), ss. 6, 435 and 439—Eastern Bengal and Assam Disorderly Houses Act (II. of 1907), ss 2 to 6—Procedure in cases under ss. 3 and 6 of the Act—Offence.] A Magistrate of the first class, acting under s. 3 of the Eastern Bengal and Assam Disorderly Houses Act, 1907, is a "Criminal Court" within s. 6 of the Criminal Procedure Code, and the High Court has jurisdiction to revise his proceedings under ss. 435 and 439. But where such proceedings were in themselves perfectly fair and reasonable, the only error being possibly the administration of oaths to the witnesses, the High Court refused to interfere. Ss. 2 and 3 of the Act do not create any offence, the only offence created by the Act being, as provided in s. 6, disobedience to the order of the Magistrate passed under s 3. The procedure to be followed under the Act is that, upon a sanction, report or order under s. 5, the Magistrate must, if he intends to go further, summon the owner or other person mentioned in s. 3 to show cause, and in the event of his failure to appear, he may proceed in his absence. He must next satisfy himself that the house is used as described in s. 2 (*a*), (*b*) or (*c*), doing so in any way that does not violate the ordinary rules of fairness and propriety; but he is not bound to act only on legal evidence, and he need not, and possibly may not, administer oaths to persons of whom he may make enquiry. If he makes an order under s. 3, proceedings for disobedience must be taken independently under s. 6, and conducted according to the ordinary procedure prescribed for the trial of offences.—RAJANI KHEMTAWALI *v.* PRAMATHA NATH CHOWDHRY, I. L. R, 37 Cal. 287.

2. HIGH COURT—*Jurisdiction of—Jurisdiction of the High Court to try a Native Indian seaman for an offence committed on board a British vessel on the high seas—Stoppage of the vessel thereafter at intermediate ports—Accused brought to Calcutta in custody—Applicability of English law to the offence and the charge, and of Indian law to the procedure and sentence—Courts (Colonial) Jurisdiction Act (37 & 38 Vict. c. 27), s 3—Merchant Shipping Act (57 & 58 Vict. c 60), ss. 684, 686.*] The High Court of Calcutta has jurisdiction, in its Original Criminal Side, under ss. 684 and 686 of the Merchant Shipping Act (57 & 58 Vict. c. 60), to try a Native Indian seaman for murder or manslaughter committed

High Court (*contd.*)—

on board a British vessel on the high seas, who is brought to Calcutta under custody, notwithstanding that the vessel touched, after the commission of the offence, at intermediate ports in the course of the voyage. The offence should be tried, and the charge framed, under the English law, but the procedure at the trial and the sentence must be regulated by the law of India S. 3 of 37 & 38 Vict. c. 27, does not deal with the trial of the case, but with the sentence after conviction. *Queen-Empress* v. *Sheikh Abdool Rahiman*, I. L. R., 14 Bom. 227, and *King-Emperor* v. *Chief Officer of the "Mushtari,"* I. L. R, 25 Bom. 636, dissented from.—EMPEROR *v.* SALIMULLAH, I. L. R, 39 Cal. 487.

3. HIGH COURT — *Criminal Revisional Jurisdiction—Calcutta Municipal Act (Bengal Act III. of 1899) s. 645 and s. 408 — General Committee, power of the — Owner, determination of.*] By s. 645 of the Calcutta Municipal Act (Bengal Act III. of 1899) the Legislature has given power to the General Committee of the Calcutta Municipal Commissioners to determine in a case, where there are gradations of owners of persons, who may be regarded as owners or where there is a doubt as to who is the owner bound to perform any duty imposed by the Act, which of such owners shall be deemed to be bound to perform such duty. That discretion having been by law vested in the General Committee, the High Court, in the exercise of its criminal revisional jurisdiction, has no power to set aside or question the act done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law.—SHAMUL DHONE DUTT *v.* CORPORATION OF CALCUTTA, I. L. R. 34 Cal. 80.

4. HIGH COURT—*Jurisdiction of—Power to revise orders of discharge by Presidency Magistrate, and to direct further inquiry—Criminal Procedure Code (Act V. of 1898) ss. 423, 439—Charter Act (24 and 25 Vic., c. 164) s. 15.*] The High Court has power, under s. 439 read with s. 423 of the Criminal Procedure Code to revise an order of discharge passed by a Presidency Magistrate and to direct a further inquiry, if there are good reasons for doing so, although no question of jurisdiction arises in the case. *Hari Dass Sanyal* v. *Saritulla*, I. L. R, 15 Cal. 608 *Colville* v. *Kristo Kishore Bose*, I. L. R., 26 Cal. 746, *Dwarka Nath Mondul* v. *Beni Madhab Banerjee*, I. L. R., 28 Cal. 652, and *Emperor* v. *Varjivandas*, I L. R., 27 Bom. 84, followed. *Bellew* v. *Parker*

High Court (*contd.*)—

7 C. W. N. 521, referred to. *Charoobala Dabee* v. *Barendra Nath Mozumdar*, I. L. R., 27 Cal. 126, *Kedar Nath Sanyal* v. *Khetra Nath Sikdar*, 6 C. L. J 705, and *Debi Bux Shroff* v. *Jutmal Dungarwal*, I. L. R. 33 Cal. 1282, discussed and dissented from. The High Court cannot interfere, under s. 15 of the Charter Act, with the order of a Subordinate Court on the ground of an error in law, but only for an error affecting jurisdiction, that is, either a want or refusal of jurisdiction or an illegality in the exercise of it. *Tejram* v. *Harsukh*, I. L. R. 1 All. 10, and *Corporation of Calcutta* v. *Bhupati Roy Chowdhry*, I. L. R. 26 Cal. 74, referred to. Where on the admission of the accused an offence of criminal misappropriation might have been established, and the Magistrate did not consider or elicit matters of vital importance in the case :— *Held*, that there had been no proper inquiry into the charge, and that there were *prima facie* grounds for directing a further inquiry *Ram Logan Dhobi* v. *Inglis*, unreported, and *Hari Mondi* v. *Kumode*, unreported, distinguished.—MALIK PRATAP SINGH v. KHAN MAHOMED, I. L. R., 36 Cal. 994.

5. HIGH COURT — *Criminal revisional jurisdiction—Interference on questions of law—Findings of facts when can be questioned—Criminal Procedure Code (Act V. of 1898), s. 435—Indian Penal Code (Act XLV. of 1860), ss. 511, 124A—Attempt to commit offences—Attempt to commit the offence of sedition—Intention, a question of fact.*] It is the settled practice of the High Court of Bombay to refuse to interfere, in the exercise of its revisional jurisdiction, in regard to findings of fact, except on very exceptional grounds, such as a misstatement of evidence by the lower Court or the mis-construction of documents, or the placing by that Court of the *onus* of proof on the accused contrary to the law of evidence. *Queen-Empress* v. *Shekh Saheb Badrudin*, 8 Bom. 197; *Queen Empress* v. *Mahomed Hasan*, Unrep. Cri. Cas. 244; and *Queen-Empress* v. *Chagan Dayaram* 14 Bom. 331, followed. Under the Indian Penal Code (Act XLV. of 1860) all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public.

High Court (*contd.*)—

In cases of sedition, the question of intention is one of fact.—EMPEROR *v.* GANESH BALVANT MODAK, I. L. R., 34 Bom. 378.

6. HIGH COURT—*Original Side, jurisdiction of — Revisional jurisdiction over Presidency Small Cause Court—Civil Procedure Code (Act V. of 1908), s. 115—"Appeal"—Practice—Sanction to prosecute—Code of Criminal Procedure (Act V. of 1898) ss. 195 (6), 439.*] A Judge of the Presidency Small Cause Court, Calcutta, had summarily refused an application for sanction to prosecute the plaintiff for making a false claim in a suit before him. On an application to the High Court under s. 115 of the Code of Civil Procedure, to set aside this order and to compel the Judge to determine the application :—*Held*, that the jurisdiction of the High Court in all such revisional applications, whether in respect of suits or other matters, is vested in a single Judge sitting on the Original Side. *Samsher Mundul* v. *Ganendra Narain Mitter*, I. L. R., 29 Cal. 498, *Sarat Chandra Singh* v. *Brojo Lal Mukerjee*, I. L. R., 30 Cal. 986, followed. *Haladhar Maiti* v. *Choylonna Maiti*, I. L. R., 30 Cal. 588, referred to. A Civil Court, when acting under s. 195 of the Criminal Procedure Code, is not in any way exercising criminal jurisdiction and is subject to the revisional jurisdiction of the High Court under s. 115 of the Code of Civil Procedure. *Solig Ram* v. *Ramji Lal*, I. L. R., 28 All 554, *In the Matter of the petition of Bhup Kunwar*, I. L. R. 26 All 240, *Ram Prosad Roy* v. *Sooba Roy*, 1 C. W. N. 400, *Guru Churn Saha* v. *Girija Sundari Dasi*, 7 C. W. N. 112, *Kali Prosad Chatterjee* v. *Bhuban Mohini Dasi*, 8 C. W. N. 73, *Eranholi Athan* v. *King-Emperor*, I. L. R., 26 Mad. 98, referred to. An application under s. 195, sub-s 6 of the Criminal Procedure Code is not an appeal, hence the revisional jurisdiction under s. 115 of the Civil Procedure Code is not excluded. *Hardeo Singh* v. *Hanuman Dat Narain*, I. L. R., 26 All. 244, distinguished.—RAMADHIN BANIA *v.* SEWBALAK SINGH, I. L. R., 37 Cal. 714.

7. HIGH COURT—*Reference to, Acquittal by Jury—Powers of the High Court—"Opinion" of Jury in cases of divided verdict—Consideration of entire evidence—Verdict not unreasonable on the face of the charge—Pardon—Omission to state reasons when facts leading to grant of pardon appear on the record—Criminal Procedure Code (Act V. of 1898), ss. 307, 337 (4).*] Where the facts which led up to the tender of pardon appear on the record, the omission by the Magistrate granting it to state his reasons for so doing is not an illegality nor

High Court (*contd.*)—

even an irregularity which vitiates the subsequent proceedings. *Deputy Legal Remembrancer* v. *Banu Singh*, 5 C. L. J. 224, followed. The High Court cannot throw out a reference under s. 307 of the Criminal Procedure Code merely because it might be argued, upon the face of the charge to the Jury, that the verdict was not altogether an unreasonable one, but it must consider the entire evidence and arrive at its own Judgment after giving due weight to the opinions of the Judge and Jury. *Emperor* v. *Lvall*, I. L. R., 29 Cal. 128, and *Emperor* v. *Abdul Rahman*, 9 C. L. J. 432, followed. *King-Emperor* v. *Chidghan Gossain*, 7 C. W. N. 135, *Emperor* v. *Anaruldin Biswas*, unreported. *King-Emperor* v. *Anes*. unreported, and *King-Emperor* v. *Prasanna Kumar Ganguli*, unreported, referred to. *Emperor* v. *Chirkua*, 2 All. L. J. 475, dissented from. The opinion of the Jury is their conclusion and not the reasons therefor, and in the case of divided verdicts the opinion of the minority must also be considered by the Court. The Legislature in directing the High Court to duly weigh the opinion of the Jury gives an implied authority for the taking of their reasons for the verdict, and the Judge will do well before making the reference to invite such reasons, not for the purpose of deciding whether it should be made, but for consideration by the High Court, after having made up his mind to refer the case and after telling the Jury of his intention to do so. But the omission to take or record the reasons does not warrant the High Court in declining to go into the evidence. *Emperor* v. *Chellan*, I. L R., 29 Mad. 91, referred to.—EMPEROR *v.* ANNADA CHARAN THAKUR, I. L. R. 36 Cal. 629.

Human food—

HUMAN FOOD—*Calcutta Municipal Act (Bengal III. of 1899), ss. 502, 505—Destruction of articles for Human food—Purchase of damaged rice intending to sell it as food for pigs—Order for its destruction—Circumstances necessary to justify such order.*] In order to justify an order under s. 505 of the Calcutta Municipal Act of 1899, the Magistrate must be satisfied, and there must be a finding in his judgment that the article directed to be destroyed comes within s. 502 of the Act, and is either exposed or hawked about for sale, or deposited in or brought to, any place for the purpose of sale or preparation for sale, and is intended for human food. Where certain damaged rice which had been purchased by a person who intended to sell it as food for pigs, was ordered to be destroyed by a Magistrate under s. 505 of the Calcutta Municipal Act, and the judgment of the Magistrate con-

Human food (*contd.*)—

tained no finding that the rice was brought for the purpose of sale or that it was intended for human food, but contained a finding that there always was a risk that it might be sold for human consumption to poorer classes, or might be used in a flour mill worked by unscrupulous persons: *Held*, that the fact that this danger existed did not justify the order and that until some attempt was made to sell the rice for consumption by the poorer classes, the Corporation was not justified in destroying the property of a man who was disposing of it in a way which was perfectly legitimate—CHUNDRA COOMAR BISWAS *v.* CALCUTTA CORPORATION, I. L. R., 30 Cal. 421.

Hurt by gun—

HURT—*Penal Code, ss. 286, 337—Causing hurt by means of a gun—Evidence of negligence.*] *Held* that the causing of hurt by negligence in the use of a gun would fall within the purview of s. 337 rather than of s. 286 of the Penal Code. But where all the evidence against the accused was that he went out shooting in the month of July when people were likely to be about in the fields and that a single pellet from his gun struck a man who was sitting in a field, it was *held* that this was not sufficient evidence of rashness or negligence to support a conviction under s. 337 of the Code.—EMPEROR *v.* ABDUS SATTAR I. L. R., 28 All. 464; 3 A. L. J., 332.

I.

Illegal Arrest—

ILLEGAL ARREST—*Conviction.* *Held* that the legality or illegality of an arrest does not affect the jurisdiction of the Court and a conviction, otherwise legal, is not bad, merely because the arrest was illegal.—JUMA *v.* KING-EMPEROR, 17 P. R. 1906. Cr.

Illegal Gratification—

2. ILLEGAL GRATIFICATION—S. 161 of the Indian Penal Code (Act XLV. of 1860) requires proof that an official has obtained, as a motive or reward for official conduct, an illegal gratification for himself or another. That other may or may not be an official, and therefore may be wholly unconnected with the official conduct. The conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it. This is clear from the phrase "in the exercise of *his* official functions." To obtain a bribe as a motive or reward for another's conduct does not fall within the section, though it may be an abetment of that offence or cheating. The performance of the act which is consideration for the bribe is not essential. But it is essential that the bribe should be obtained "as a motive or reward." That phrase evidently means on

Illegal Gratification (*contd.*)—

the understanding that the bribe is given in consideration of some official act or conduct. Such an understanding need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances.—EMPEROR *v.* BHAGWANDAS, I. L. R., 31 Bom. 335.

Illegal Gratification, Attempt to obtain—

1. ILLEGAL GRATIFICATION, ATTEMPT TO OBTAIN—*Penal Code (Act XLV. of 1860), s. 161—Demand of 'dusturi' by Civil Court peon.*] A demand of *dusturi* by a Civil Court peon from the plaintiff, as a motive or reward for serving the summonses on his witnesses without an identifier, amounts to an attempt to obtain an illegal gratification within s. 161 of the Penal Code. *Empress of India* v. *Bhideo Sahai*, I. L. R., 2 All 253, followed. *Queen-Empress* v. *Ramakka*, I. L. R., 8 Mad. 5 distinguished. —RATAN MONI DEY *v.* KING-EMPEROR, I. L. R., 32 Cal. 292.

Insanity—

1. INSANITY—*Insane delusion—Unsoundness of mind—Criminal liability, test of—Penal Code (Act XLV. of 1860), s. 84.*] Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof is to be therefore excused depends on the nature of the delusion. If he labours under such partial delusion only, and is not in other respect insane, he must be considered in the same situation as to responsibility, as if the facts, with respect to which the delusion exists, were real. The accused was convicted of having murdered his brother-in-law, a lad 8 years old. In his confession to the Magistrate the accused stated that he had seen the deceased arrange a clandestine meeting between his wife and a young man, whom he actually saw enter his wife's room some time before midnight and again leave it after a considerable interval, and that in consequence of what he saw he had not a wink of sleep that night and was devoid of his senses at the time he killed the deceased. *Held*, that there was no doubt the accused did actually believe he had ocular proof of his wife's infidelity, and that if he had acted under the immediate influence of such a delusion, the estimate of his guilt must be made upon the basis of the actual existence of the facts in regard to which the delusion existed, and had the accused acted under the immediate influence of such provocation his guilt would have been greatly reduced, but as he did not do so, his offence was murder under s. 302 of the Penal Code, nor was there any ground for the application of s. 84 of that Code.—GHATU PRAMANIK *v.* KING-EMPEROR, I. L. R., 28 Cal. 613.

Insanity (*contd.*)—

2. INSANITY—*Unsoundness of mind—Delusion—Knowledge of the nature of the act—Penal Code (Act XLV. of 1860) s. 84.*] Where the accused cut his wife's throat without any rational motive, and was captured at once without any attempt on his part to escape or offer resistance, and the evidence showed that before the commission of the offence he suffered from a failure of reasoning powers, and also that he entertained delusions as to dangers which threatened his wife:—*Held*, that the facts proved unsoundness of mind which prevented the accused from knowing the nature of his act, and that s. 84 of the Penal Code applied.—DIL GAZI *v.* EMPEROR, I. L. R., 34 Cal. 686.

Institution of Criminal Proceedings—

1. INSTITUTION OF CRIMINAL PROCEEDINGS—*Criminal Procedure Code (Act V. of 1898), s. 145—Subordinate Magistrate, refusal to take proceedings—Institution of such proceedings by District Magistrate on same police-report—Jurisdiction.*] Where on receipt of a police-report a Subordinate Magistrate, having come to the conclusion that there were no sufficient grounds for proceeding under s. 145 of the Code of Criminal Procedure, declined to take such proceedings, and the District Magistrate on the same police report expressed a different opinion and instituted proceedings under s. 145 of the Code. *Held*, that the District Magistrate had acted with jurisdiction, and that the order of the Subordinate Magistrate declining to proceed under s 145 could not operate as a bar to such action. *Chathu Rai* v. *Niranjan Rai* (I. L. R., 28 Cal. 729) distinguished.—BAIDA NATH MAJUMDAR *v.* NIBARAN CHUNDER GHOSE, I. L. R., 29 Cal. 242.

2. INSTITUTION OF CRIMINAL PROCEEDINGS—*Jurisdiction—Report by police officer of one district—Proceedings instituted by Magistrate of another district—Code of Criminal Procedure (Act V. of 1898), s 145.*] The Magistrate of one district has jurisdiction to institute proceedings under s. 145 of the Code of Criminal Procedure on a report drawn up by a police-officer of another district in respect of such portions of the land or water mentioned in the report as lies within his jurisdiction.—ISHAN CHUNDER DASS *v.* GARTH, I. L. R., 29 Cal. 885.

Issue of Process—

ISSUE OF PROCESS—*Criminal Procedure Code (Act V. of 1898), s. 202—Failure to "record reasons" for postponing issue of process and inquiring into case—Irregularity.*] By s. 202 of the Criminal Procedure Code, if a Magistrate is not satisfied as to

Issue of Process (*contd.*)—

the truth of an offence he may, when the complainant has been examined, "record his reasons, and may then postpone the issue of process" and inquire into the case: *Held*, that the failure on the part of a Magistrate to record his reasons is at most an irregularity and unless it in fact occasions a failure of justice is not a ground for setting aside his order.—KING EMPEROR *v.* ALAGARISAMI PATHAN I. L. R., 25 Mad. 546.

Insolvent Act—

INSOLVENT ACT—*Stat. 11 and 12 Vict., c. 21, ss. 47 and 50—Offence under s. 50, a criminal offence—Charge, &c., must be framed to sustain conviction and sentence—Opposing creditors—Grounds of opposition should be stated in clear terms—Practice—Procedure.*] Insolvents were found guilty under s. 50 of the Indian Insolvent Act of wilfully preventing or purposely withholding the production of certain papers relating to their affairs and sentenced to three months' imprisonment. *Held* that the proceedings, so far as they resulted in imprisonment, amounted to a criminal case. *Held*, further, following *Ex parte Van Sandau* (1 Phillips 445, that "in all criminal cases it is necessary that there should be a charge, a finding and a conviction as a foundation for the sentence:" and that as there was no charge, the order for imprisonment was wrongly made. S. 47 of the Insolvent Act provides the machinery by which the grounds of opposition to a debtor's discharge may be inquired into and precisely defined before the hearing.—*In re* VALLABHDAS, I. L. R., 27 Bom 394.

Irregularity—

1. IRREGULARITY—*Criminal Procedure Code, ss. 243, 252—Trial of a warrant case as a summons case not a mere irregularity.*] Where a Magistrate in trying a warrant case does not adopt the course prescribed by s. 252 of the Code of Criminal Procedure but convicts the accused on his own admission without taking evidence and without framing a formal charge, such procedure is not a mere irregularity and the conviction will be set aside.—EMPEROR *v.* CHINNAPAYAN, I. L. R., 29 Mad. 372.

2. IRREGULARITY—*Criminal Procedure Code, ss. 191, 537—Procedure—Omission of Magistrate to inform accused of his right to be tried by another Court.*] The omission on the part of a Magistrate to inform an accused person to whom the provisions of s. 191 of the Code of Criminal Procedure are applicable, of his right to have the case tried by another

Irregularity (*contd.*)—

Court amounts to more than a mere irregularity to which s. 537 of the Code will apply; but a Magistrate taking cognizance of an offence under s. 190, cl. (*c*), of the Code is not competent to try the case unless and until he has informed the accused before taking any evidence, that he is entitled to have his case tried by another Court.—EMPEROR *v.* CHEDI, I. L. R., 28 All. 212.

J.

Jalkar—

JALKAR—*Dispute concerning jalkar—Jurisdiction of Magistrate to institute proceedings under s. 145 of the Code after an order binding down one of the parties to keep the peace—Order attaching the subject of dispute on being unable to determine the question of possession—Criminal Procedure Code (Act V. of 1898), ss. 107, 145, 146.*] The Magistrate has jurisdiction to take proceedings under s. 145 of the Criminal Procedure Code, after an order under s. 107 of the Code binding down one of the parties to keep the peace, when the circumstances so require. Where there was a reasonable apprehension that several persons, who were interested in the subject of dispute and had absconded at the time of the s. 107 proceeding, might cause a breach of the peace with the first party, who were fishermen, or that the latter might seek to enforce their rights against the second party, who had been bound down in which case the order binding them down would have the effect of ousting them from any possession they might have:—*Held*, that the Magistrate acted properly in instituting proceedings under s 145 of the Code, in order to determine which party was in actual possession of the disputed properties, and was justified in attaching the same, under s. 146, if he found himself unable to determine the question of possession.—BAISNAB CHARAN MAJHI *v.* GATINATH MUNSHI, I. L. R., 39 Cal. 469.

Joinder of Charges—

1. JOINDER OF CHARGES—*Joint Trial—Offences of the same kind by the same persons on different dates—Separate transactions—Misjoinder of persons—Criminal Procedure Code (Act V. of 1898), ss. 233, 234, and 239.*] The petitioners and others entered upon a plot of land belonging to the complainant on the 22nd February and looted his linseed crop, and on the next day, the same persons entered upon another plot and looted his tobacco. They were tried

Joinder of Charges (*contd.*)—

jointly, under the summary procedure, and convicted under ss 143, 379 of the Penal Code in respect of each occurrence. *Held* that the events of the two different dates were not parts of the same transaction, and that the trial was bad for misjoinder under s 239 of the Criminal Procedure Code. S. 234 by its terms refers to the case of a single accused, and is not applicable, where several persons are tried jointly under s. 239.—BUDHAI SHEIK *v.* EMPEROR, I. L. R., 33 Cal. 292; 10 C. W. N. 32.

2. JOINDER OF CHARGES—*Criminal Procedure Code (Act V. of 1898), ss 202, 222, sub-s. (2), 234, 164 and 364—Embezzlement—Three offences—One charge—Misjoinder—Confession taken during enquiry under s. 202.*] An accused was alleged to have committed embezzlement of three separate sums from three separate persons. At his trial, one charge was drawn up in which all these were specified. He was not charged with three offences under s. 409 of the Penal Code, but with one offence under it and he was convicted of one offence and sentenced to one term of imprisonment. *Held* that the charge was in accordance with ss. 234, 222, sub-s. (2), of the Criminal Procedure Code. *Emperor* v. *Gulzari Lal* (I. L. R., 24 All. 254), *Samirruddin Sarkar* v. *Nibaran Chandra Ghose* (8 C. W. N 807; I. L. R., 31 Cal. 628) and *Emperor* v. *Ishtiaf Ahmed* (I. L. R., 27 All 60) followed and *Subramania Iyer* v. *King-Emperor* (5 C. W. N. 866; I. L. R., 23 Mad. 61) referred to. A confession recorded in the course of an enquiry under s. 202 of Criminal Procedure Code is not admissible in evidence as such, as the accused was not then being tried for the offence. Such a confession cannot be called as one under s. 164 because the case was not at that time under enquiry before the Police nor as one under s. 364 as the accused was not then being tried for an offence.—SAT NARAIN TEWARI *v.* EMPEROR, 10 C. W. N. 51.

3. JOINDER OF CHARGES — *Criminal Procedure Code (Act V. of 1898), s. 233—Offences arising out of the same transaction.*] The accused was tried under one charge for committing extortion of a *muchalika* and of Rs 25, respectively from the complainant. *Held* that there should have been separate charge for every distinct offence, and the neglect to observe s. 233 of Criminal Procedure Code though the charges might be assumed to have arisen out of the same transaction, is fatal to the case.

Joinder of Charges (*contd.*)—

Subramania Iyer v. *King-Emperor* (5 C. W. N. 866; I. L. R., 25 Mad. 61) followed.—GUL MAHOMED SIRCAR *v.* CHEHAREE MANDAL, 10 C. W. N. 53.

4. JOINDER OF CHARGES—*Criminal Procedure Code, s. 527 — Cheating — Attempt against villagers jointly — Misjoinder — Statement before settlement officer, admissibility of.*] Where the accused asked the villagers 8 annas and 4 annas a head for signing their *purchas* in a body and not individually, it is not necessary that as many charges as there were villagers should have been drawn up, and he was rightly tried under one charge. The statement made by the accused before the settlement officer that he accepted what the villagers volunteered to pay him was held to have been admissible in evidence. Where the accused was charged in one charge with two attempts to cheat made on two different dates, there should have been two different charges; the illegality vitiates the trial and cannot be cured by s 537 of the Criminal Procedure Code. *Subramaniya Iyar* v. *The King-Emperor* (5 C. W. N. 866 P. C.) relied upon and *Emperor* v. *Shereef-ali Alibhoy* (I. L. R., 27 Bom. 135) distinguished.—JOHAN SUBARNA *v.* KING-EMPEROR, 10 C. W. N. 520.

5. JOINDER OF CHARGES—*Criminal Procedure Code, ss. 227, 233, 234—Joinder of more than three offences in one trial illegal —Trial not validated by striking out charge to cure such defect after case closed, though before judgment—Penal Code (Act XLV. of 1860), ss. 470, 480—Offence of using false trademark—No acquisition of the trademark in the sense in the English Act necessary under s. 478 of the Penal Code.*] A person selling soap not manufactured by P, in a box which bears the name of P as a soap manufacturer, uses a false trademark and is guilty of an offence under s 480 of the Penal Code. It is not necessary to constitute an offence under s. 478 that a trademark in the sense in which the word is used in the English Patents, Designs and Trademarks Acts should have been acquired; and the mark is none the less a false mark because it appeared on the box and not on the goods. Under ss. 233, 234 of the Code of Criminal Procedure, a person cannot be charged with more than three offences at one trial; and the defect cannot be cured, after the accused had pleaded and the case had closed, by amending the charges so as to reduce it to three offences. Although the words in s. 227 of the Code of Criminal Procedure are wide enough to warrant a Court in altering a charge

Joinder of Charges (*contd.*)—

by striking out one of the charges at any time before judgment, the section does not warrant the striking out of a charge for the purpose of curing an illegality already committed and after the mischief which the Legislature intended to guard against had been done. *Subrahmania Ayyar* v. *King-Emperor*, (I. L. R., 25 Mad. 61), referred to and explained.—MANAVALA CHETTY *v.* EMPEROR, I. L. R., 29 Mad. 569.

6. JOINDER OF CHARGES—*Criminal Procedure Code* (*Act V. of 1898*), *ss. 222, 239—Successive breaches of trust—Joint trial—'Transaction' meaning of.*] Where the accused persons were jointly in charge of trust funds, so that one could not act without the connivance of the other, and each of them misappropriated sums of money from the trust funds to his own use, thus evidently carrying through their object in concert, the fact that they carried out their scheme by successive acts done at intervals, alternately taking the benefits, did not prevent the unity of the project from constituting the series of acts one transaction, *i.e.*, the carrying through of the same object which both had, from the first act to the last, and there was no objection to their being tried jointly at one trial. S. 222 of the Criminal Procedure Code clearly admits of the trial of any number of acts of breach of trust committed within the year as amounting only to one offence. The section does not require any particular formulation of the accusation, but only enacts that it is sufficient to show the aggregate offence without specifying the details. It dispenses with the necessity of amplification; it does not prohibit enumeration of the particular items in the charge. S. 239 of the Criminal Procedure Code admits of the joint trial when more persons than one are accused of different offences committed in the same transaction. It suffices for the purpose of justifying a joint trial that the accusation alleges the offences committed by each accused to have been committed in the same transaction, within the meaning of s. 239. It is not necessary that the charge should contain the statement as to the transaction being one and the same. It is the tenor of the accusation and not the wording of the charge that must be considered as the test. In s. 239 of the Code, a series of acts separated by intervals of time are not excluded, provided that those jointly tried have throughout been directed to one and the same objective. If the accused started together for the same goal, this suffices to justify

Joinder of Charges (*contd.*)—

the Joint trial, even if incidentally, one of those jointly tried has done an act for which the other may not be responsible. The foundation for the procedure in s. 239 is the association of two persons concurring from start to finish to attain the same end. No doubt if it were attempted to associate in the trial a person who had no connection whatever with the transaction at a time when one or more of the series of the acts alleged had been done then that would be outside the provisions of the section. "Transaction" means "carrying through" and suggests not necessarily proximity in time—so much as continuity of action and purpose.—EMPEROR *v.* DATTO, I. L. R., 30 Bom. 49.

7. JOINDER OF CHARGES—*Criminal Procedure Code, ss. 233-239—Misjoinder of charges.*] The accused were charged at one trial with murder of N and with having caused grievous hurt to W who resisted them in their attempt to carry off the body of N, soon after the murder. They were acquitted of the charge of murder but was convicted of causing grievous hurt. *Held* that the trial was bad for misjoinder of charges inasmuch as both the offences could not be said to have been committed in the same transaction within the meaning of s. 239 of the Criminal Procedure Code.—NAWAB SINGH *v.* CROWN, 10 P. R. 1906, Cr.

Joint Penalty—

JOINT PENALTY—*Joint Conviction, legality of—Calcutta Municipal Act* (*Ben. Act III. of 1899*), *ss. 444 and 574—Disobedience of order under s. 444* (*2*) *by two persons.*] The owner and an occupier of a house in Calcutta were jointly convicted of disobedience of an order under s. 444 of the Calcutta Municipal Act, and a joint penalty of fine was imposed upon them:—*Held* that the joint conviction and the joint penalty were illegal, each of the accused being guilty of a separate offence.—BHAIRAB CHANDRA KOLAY *v.* CORPORATION OF CALCUTTA, I. L. R., 37 Cal. 895.

Joint Trial—

See JOINDER OF CHARGES, 1, 6,

1. JOINT TRIAL—*Criminal Procedure Code* (*Act V. of 1898*), *ss. 239, 537—Separate retainer of stolen properties—Offences committed in the same transaction.*] *Per* HARRINGTON AND STEPHEN, JJ. (BRETT, J., dissenting). Different persons charged with separately retaining different articles of stolen properties, which are proceeds of the same theft, cannot be tried together, as the offences charged cannot be said to have been committed in the same transaction.

Joint Trial (*contd.*)—

Such joint trial is illegal and is not saved by the operation of s 537 of the Criminal Procedure Code. *Subrahmania Ayyar* v. *King-Emperor* (I. L. R., 25 Mad. 61; 5 C. W. N. 866) followed. *In re A. David* (5 C. L. R. 574) and *Bishnu Banwar* v. *Empress* (1 C. W. N. 35) referred to.—ABDUL MAJID *v.* EMPEROR, I. L. R., 33 Cal. 1256; 9 C. W. N. 912.

2. JOINT TRIAL — *Criminal Procedure Code, ss. 233, 239, 439, 537 — Rioting — Irregularity — Revision by Chief Court.*] The joint trial of two parties arrayed against each other in a riot is altogether illegal and void, and not merely irregular within the purview of s. 537 of the Criminal Procedure Code. But the Chief Court would not interfere to set aside the conviction in every such case, unless prejudice is caused to the accused by such joint trial. *Hansa* v. *Ram Singh* (36 P. R. 1902, F. B.); *Queen-Empress* v. *Chandra* (I. L. R., 20 Cal. 537) referred to.—ALA DYA *v.* KING-EMPEROR, 5 P. R. 1906 Cr.

3. JOINT TRIAL—*Same transaction — Previous conviction — Counterfeit Coin — Possession, delivery of—Criminal Procedure Code (Act V. of 1898), ss. 235, 239, 403—Indian Penal Code (Act XLV. of 1860) ss 240, 243.*] C gave the appellant 50 counterfeit rupees to pass for him These rupees were stolen and the appellant on the discovery of the theft gave certain information to the police, which led to the discovery of 64 other counterfeit coins in C's house. C was separately tried and convicted under s. 243 of the Penal Code of being in possession of the latter coins. C and the appellant were also tried jointly and were convicted; C under s. 240 of the Penal Code with reference to the 50 counterfeit rupees he had made over to the appellant, and the appellant under s. 243 of the Code of being in possession of the said rupees. On appeal it was contended that C could not be tried for an offence under s. 240 after he had been previously convicted of the possession of base coin under s. 243 of the Penal Code and further that the joint trial was bad in law. *Held*, that the joint trial was valid; that the trial of C under s. 240 of the Penal Code was legal, it being for an offence distinct to that for which he had been previously convicted. — EMPEROR *v.* PROSANNA KUMAR DAS, I. L. R., 31 Cal. 1007.

4. JOINT TRIAL — *Several persons—Offences not committed in same transaction—Irregularity — Illegality — Criminal Procedure Code (Act V. of 1898), ss. 235, 239, and 537—Penal Code (Act XLV. of 1860), s. 225 —Indian Railways Act (IX. of 1890), s. 128.*] Gobind Koeri was caught by some persons placing clods of earth on a railway line. While being taken away by them, Gobind Koeri was shortly afterwards rescued by Hira Mander and Manger Koeri. Gobind Koeri was charged under s. 128 of the Railway Act for placing clods on the line. Hira Mander and Manger Koeri were charged under s. 225 of the Penal Code with rescuing Gobind Koeri from lawful custody. All three persons were tried jointly in one trial and were convicted. *Held*, that the offences not having been committed in the same transaction, the persons accused of each of these offences should have been tried separately, and that the Court had no jurisdiction to try them in the same trial. *Subrahmania Ayyar* v. *King-Emperor* (I. L. R., 25 Mad. 61), followed.—GOBIND KOERI *v.* EMPEROR, I. L. R., 29 Cal. 385.

5. JOINT-TRIAL — *Criminal Procedure Code (Act V. of 1898), ss. 233, 234, 235 (1) —Misjoinder of charges—Trial by jury on indictment in which charges have been wrongly joined—Irregularity in criminal proceedings—Count charging continued acts of abetment of extortion and bribery—Penal Code (Act XLV. of 1860), ss. 109, 161, and 384 — Evidence Act (I. of 1872), s. 167.*] The appellant was tried at the Criminal Sessions of the High Court, and convicted on an indictment the first count of which contravened the provisions of ss 233 and 234 of the Code of Criminal Procedure (which provide that every separate offence shall be charged and tried separately, except that three offences of the same kind may be tried together in one charge if committed within the period of one year); and did not fall within the provisions of s. 235 (1) (which provides that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person he may be charged with, and tried at one trial for, every such offence). On a case certified under Art. 26 of the Letters Patent and heard by the Full Court, it was held by the majority of the Court that the union of the first count with the others made the whole indictment bad for misjoinder, but that it was open to them to strike out the first count, rejecting the evidence with regard to it, and deal with the evidence as to the remaining counts of the indictment. This was done with the result that the conviction was upheld on one count only, the sentence being reduced. *Held*, by the Judicial Committee that the disregard of an express provision of law as to the mode of trial was not a mere irregularity such as could be remedied by s. 537 of the Criminal Procedure Code. Such a

Joint Trial (*contd.*)—

phrase as "irregularity" is not appropriate to the illegality of trying an accused person for more different offences at the same time, and those offences being spread over a longer period than by law could have been joined together in one indictment. *Smrerthwaite* v. *Hannay* (1894, A. C. 494), referred to. *In the Matter of Abdur Rahman* (I. L. R., 27 Cal. 839), dissented from. Nor could such illegal procedure be amended by arranging afterwards what might or might not have been properly submitted to the jury. To allow this would leave to the Court the functions of the jury, and the accused would never have been really tried at all upon the charge afterwards arranged by the Court. The trial having been conducted in a manner prohibited by law was held to be altogether illegal and the conviction was set aside. — SUBRAHMANIA AYYAR *v.* KING-EMPEROR, I. L. R., 25 Mad. 61.

6. JOINT-TRIAL—*Criminal proceedings—Irregularity in proceedings—Misjoinder of parties—Joint trial on charges of criminal breach of trust by carrier and receiving stolen property—Objection taken for first time in revision—Code of Criminal Procedure (Act V. of 1898), ss. 233, 239, 537—Penal Code, ss. 407, 411.*] *K S*, *K P*, and *K M* were tried jointly and convicted: *K S* under s. 407 of the Penal Code, *K P* and *K M* under s. 411 of that Code. No objection to the joint trial was taken either before the trying Magistrate or before the Appellate Court *Held* in revision (upon objection being taken to the joint trial of *K S* with *K P* and *K M*) that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider under the terms of s. 537 of the Code of Criminal Procedure whether it has in fact occasioned a failure of justice. *In the Matter of Abdur Rahman* (I. L. R., 27 Cal. 839) followed. *Held* further that having regard to the explanation to s. 537 of the Code of Criminal Procedure, the objection was not one which could be properly taken in revision; that the objection should have been raised at an earlier stage of the proceedings; and that therefore it might be taken that, not having been so raised, it had not in fact occasioned a failure of justice.—KALI PROSAD MAHISAL *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 7.

7. JOINT TRIAL—*Criminal proceedings—Irregularity in proceedings — Misjoinder of parties—Joint trial on charges of theft and receiving stolen property—Code of Criminal Procedure (Act V. of 1898), ss. 233, 239, 537—Penal Code (Act XLV. of 1860), ss. 381, 411.*] *L K* and *J.* were tried

Joint Trial (*contd.*)—

jointly and convicted, *L* under s. 381 of the Penal Code of stealing tea in the possession of his master; *K* and *J* under s. 411 of the Penal Code of dishonestly retaining some stolen tea which they had received from *L*. It was contended that the joint trial of a person charged under s. 411 of the Penal Code with a person charged under s. 381 of the Penal Code was necessarily void and the conviction bad. *Held* that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider whether, under the terms of s 537 of the Code of Criminal Procedure, it has in fact occasioned a failure of justice. *Bishnu Banwar* v. *Empress* (1 C. W. N. 35) refered to. *In the Matter of Abdur Rahman* (I. L. R., 27 Cal. 839) and *Kali Prosad Mahisal* v. *Queen-Empress* (I. L. R., 28 Cal. 7) followed.—KARU KALAL v. RAM CHARAN PAL, I. L. R., 28 Cal. 10.

8. JOINT-TRIAL—*Criminal proceedings—Misjoinder of parties—Discharge of accused on ground of misjoinder by Sessions Judge—Direction that accused be re-tried—Jurisdiction—Code of Criminal Procedure (Act V. of 1898), ss. 233, 39, 423, and 537—Penal Code (Act XLV. of 1860), ss. 411 and $\frac{414}{109}$.*] *M* and *K* were convicted at the same trial of receiving stolen property namely, currency notes, as well as of assisting in concealing or disposing of such notes which they knew or had reason to believe were stolen property. Each of them were charged with the same offences only in respect of a currency note of Rs 500, but in respect of the charges on two other notes of Rs. 100 each, the charges against each of them related only to one of these notes. *Held* that there had been a misjoinder of parties, the transactions being altogether separate and distinct against each of them. *Held* further that the Sessions Judge in discharging one of the accused on the ground of misjoinder of parties had power to add to that order a direction that the accused should be re-tried. It was not obligatory on him to leave to the discretion of the Magistrate the course which should be taken in such a matter, and it was not intended by the order of discharge in the case of *Queen-Empress* v. *Chandi Singh* (I. L. R., 14 Cal 395), to free the accused in that case from the consequences of his acts or to declare that no order for re trial could be passed in such a case. *Queen-Empress* v. *Fakirapa* (I. L. R., 15 Bom. 491), and *Empress of India* v. *Murari* (I. L. R., 4 All. 147) referred to —KUMUDINI KANTA GUHA *v.* THE QUEEN-EMPRESS, I. L. R., 28 Cal. 104.

Judgment—

1. JUDGMENT — *Presidency Magistrate, Judgment of—Sentence of imprisonment—Reasons for conviction to be recorded—Criminal Procedure Code (Act V. of 1898), s. 370, cl. (1)—Penal Code (Act XLV. of 1860), s. 408.*] S. 370 of the Criminal Procedure Code requires that, in a case in which the accused is sentenced to imprisonment, a Presidency Magistrate shall record a brief statement of the reasons for the conviction. It is not sufficient for him to record that the offence is proved, for that may necessarily be implied to be his opinion from the fact that he has convicted the accused. The law contemplates something further as the reason for the conviction.—NATABAR GHOSE *v.* PROVASH CHANDRA CHATTERJEE, I. L. R., 27 Cal. 461.

2. JUDGMENT — *Personal knowledge of Judge—Materials not in evidence or improperly admitted as basis of judgment—Validity of such judgment.*] A judgment which is based on materials which were not in evidence and which have been improperly admitted or on the personal knowledge of the Judge, is not in accordance with law. *Vallabha* v. *Madusudanan*, I. L. R., 12 Mad. 495, referred to.—DURGA PRASAD SINGH *v.* RAM DOYAL CHAUDHURI, I. L. R., 38 Cal. 153.

3. JUDGMENT—*Criminal Procedure Code (Act V. of 1898), s. 421—Summary dismissal of appeal.*] A Court, when dismissing an appeal summarily under s 421 of the Code of Criminal Procedure, is not bound to write a judgment in conformity with the provisions of s. 367.—KING-EMPEROR *v.* KRISHNAYYA, I. L. R., 25 Mad. 534.

4. JUDGMENT—*Criminal Procedure Code, ss. 369, 480, 481—Subsequent interpolation—Contempt of Court—Penal Code, s. 228.*] No Magistrate can add to, or alter the proceedings or judgment after they are signed and published. It is specially irregular when made in the absence of the accused and without notice to him. The directions contained in s. 481 of the Criminal Procedure Code are mandatory and the omission to record the particulars mentioned in that section is always fatal to the proceedings. The principal ingredient of an offence under s. 228 of the Penal Code is *intentional* insult or interruption.—SURENDRA NATH BANERJEE, *In re*, 10 C. W. N. 1062

5. JUDGMENT—*Appellate Court, contents of—Charges of unlawful assembly and theft—Statement of points for determination and findings thereon in such cases—Criminal Procedure Code (Act V. of 1898) ss. 367, 424.*] Under s. 424, read with s. 367 of the Criminal Procedure Code, the judgment of a Lower Appellate Court must, among other matters, contain the point or points for decision, the decision thereon and the reasons for the decision. On a charge under s. 143 of the Penal Code the judgment of such Court should contain, as one of the points for determination, a statement as to the existence of the elements constituting the unlawful assembly in the particular case, and the decision thereon, bearing in mind the provisions of s. 141 of the Penal Code. The judgment on a charge under s. 379 of the Penal Code should contain, as one of the points, the question as to the dishonest intention and a finding on it, especially when the taking of property is admitted, but a *bona fide* claim of right thereto is set up by the accused.—RAM LAL SINGH *v.* HARI CHARAN AHIR, I. L. R., 37 Cal. 194.

Judicial Inquiry—

JUDICIAL INQUIRY—*District Magistrate, Power of, to pass orders in cases before Subordinate Court without transfer to his own Court—Judicial enquiry before issue of process, Legality of—Criminal Procedure Code (Act V. of 1898), ss. 192, 202, 203, 204.*] *Held*, where the complaints were not made to the District Magistrate, nor had the cases based on those complaints been withdrawn to his Court by any order, but were in the Court of a Joint Magistrate who had examined the complainants, that the District Magistrate was not justified in interposing in the trial of the cases, and had no authority under the law to pass any order in those cases. That even if the cases had been removed by the District Magistrate to his own Court for trial, it was very questionable whether the District Magistrate could pass orders directing a judicial inquiry by another Magistrate before the issue of processes so as to postpone the trial.—JHUMUCK JHA *v.* PATHUK MANDAL, I. L. R., 27 Cal. 798.

Judicial Proceeding—

1. JUDICIAL PROCEEDING—*Criminal Procedure Code (Act V. of 1898), s. 476—Records of case called for by District Magistrate in his executive capacity.*] Though an order passed after records have been called for, for any of the purposes specified in s. 435 of the Code of Criminal Procedure, may be a "judicial proceeding" for the purposes of s. 476 (as to which the Court gave no ruling), where a District Magistrate called for such records in his executive capacity to see whether an application for an enquiry into the conduct of a police-constable should be granted, and passed an order thereon, sanctioning his prosecution. *Held*, that there was no judicial proceeding within the meaning of s. 476, and that the order must be set aside.—SANGILIA PILLAI *v.* THE DISTRICT MAGISTRATE OF TRICHINOPOLY, I. L. R., 25 Mad. 659.

Judicial Proceeding (*contd.*)—

2. "JUDICIAL PROCEEDING" — *Preliminary inquiry by an Assistant Settlement Officer to determine whether a prosecution should be directed—Power to take evidence on oath in such inquiry—False evidence in the course of the inquiry—Criminal Procedure Code (Act V. of 1898), ss. 4 (m) and 476—Indian Penal Code (Act XLV. of 1860) s. 193 and Explanation (2)—Oaths Act (X. of 1873) s. 4—Government Rules under the Bengal Tenancy Act (VIII. of 1885), Rule 40.*] A Court holding a preliminary inquiry under s. 476 of the Criminal Procedure Code may legally take evidence on oath therein, and the inquiry is, therefore, a "judicial proceeding" within the terms of s. 4 (*m*) of the Code. *Raghoobuns Sahay* v. *Kokil Singh*, I. L. R. 17 Cal. 872, and *Emperor* v. *Gopal Barik*, I. L. R., 34 Cal. 42, referred to. Such an inquiry is also a stage of a judicial proceeding under Explanation 2 to s. 193 of the Penal Code, and a person giving false evidence in the course of it commits an offence under the section. Under s. 4 of the Oaths Act and Rule 40 (*a*) of the Government Rules framed under the Bengal Tenancy Act, a Settlement Officer has the power to receive evidence on oath, and is competent to hold a preliminary inquiry under s. 476 of the Criminal Procedure Code.—ABDULLAH KHAN *v.* EMPEROR, I. L. R., 37 Cal. 52.

3. JUDICIAL PROCEEDING—*Criminal Procedure Code, ss. 4, 476— Jurisdiction—Inquiry into petition against subordinate official.*] *Held* that an inquiry conducted by a Magistrate into the truth of allegations against a subordinate official contained in a petition presented to a Deputy Commissioner is a judicial proceeding within the meaning of s. 4 (*m*) of the Code of Criminal Procedure. *Hara Charan Mookherji* v. *The King-Emperor*, (I. L. R., 32 Cal. 367) distinguished.—EMPEROR *v.* KUNA SAH I. L. R., 28 All. 89.

4. JUDICIAL PROCEEDING — *Offence in the course of — Resistance to delivery of possession—Criminal Procedure Code (Act V. of 1898) ss. 4 (m), 476—Jurisdiction—Civil Procedure Code (Act XLV. of 1882) s. 328.*] Where in an execution case a warrant for the delivery of possession of lands was entrusted for execution to the Nazir who went to the spot but was obstructed by the opposite party to the suit, and on his reporting the matter, the Munsif held an enquiry under s. 476 of the Criminal Procedure Code and sent the accused to the Magistrate for trial under s. 186 of the Penal Code:—*Held*, that the "judicial proceeding" in the case determined when the Munsif finally decided the case, there being no further question left for determination as to the rights of the parties to the suit upon which evidence could have been legally taken, that the obstruction was not therefore brought to the notice of the Munsif in the course of a "judicial proceeding," and that he had no jurisdiction under s. 476 of the Criminal Procedure Code to hold an inquiry.—HARA CHARAN MOOKERJEE *v.* KING-EMPEROR, I. L. R., 32 Cal. 367.

Jurisdiction—

1. JURISDICTION — *Criminal Procedure Code (Act V. of 1898), s. 476—Power to direct proceedings conferred on Court and not on Magistrate trying—Dismissal of complaint without adjudication no bar to proceedings under.*] The power to direct a prosecution under s. 476 of the Code of Criminal Procedure is conferred on the Court and not on the individual Magistrate who tried the case. Such power is not ousted by the dismissal, without adjudication of a complaint by the party in respect of the same offence under a sanction previously given by the Court.—RUNGA AYYAR *v.* EMPEROR, I. L. R., 29 Mad. 331.

2. JURISDICTION — *Criminal Procedure Code, ss. 6, 32—Trial commenced by officiating District Magistrate—Reversion as Joint Magistrate.*] Where a Joint Magistrate, while officiating as District Magistrate, commenced the trial of a case, he has jurisdiction to continue the trial and finish it, even after his reversion to his substantive appointment as Joint Magistrate.—EMPEROR *v.* SYED SAJJAD HUSSEIN, 3 A. L J. 825.

3. JURISDICTION—*Code of Criminal Procedure (Act V. of 1898), s. 145—High Court—Non-joinder of necessary parties—Subordinate Criminal Courts—Circumstances under which they have jurisdiction.*] The High Court has power to set aside a proceeding under s. 145 of the Code of Criminal Procedure on the non-joinder of parties whose presence is essentially necessary for the proper and effectual decision of the case. *Laldhari Singh* v. *Sukdeo Narain Singh* (I. L. R., 27 Cal. 892) followed. Under s. 145 of the Code of Criminal Procedure a special jurisdiction is vested in the Subordinate Criminal Courts under special circumstances and for a special purpose. When either the special circumstances do not exist or when the order made under s. 145 does not attain the purpose, for which the jurisdiction is created, then the special jurisdiction vested under that section falls to the ground. The circumstances under which the jurisdiction springs up are circumstances which give rise to an apprehension of a breach of the peace, and, if there

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is no apprehension of a breach of the peace, there is no jurisdiction to make the order. The purpose the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under s. 145, it must be taken to have been without jurisdiction. —ANESH MOLLAH *v.* EJAHARUDDI MOLLAH, I. L. R., 28 Cal. 446.

4. JURISDICTION — *Complaint—Dismissal of complaint—Examination of Complainant—False charge—Criminal Procedure Code (Act V. of 1898), ss. 156, 159, 200, 202, 203—Penal Code (Act XLV. of 1860), s. 211 — Jurisdiction of Magistrates.*] A complaint was made to a Magistrate who, without examining the complainant, sent the petition of complaint under s. 156 of the Code of Criminal Procedure to the police for enquiry, and upon receipt of the police report directed a Sub-Deputy Magistrate to make a preliminary inquiry into the case under s. 159 of the Code, and on receipt of his report the Magistrate, not being satisfied with it, cross-examined the complainant and some of his witnesses, examined some witnesses sent up by the police, and then dismissed the complaint under s. 203 of the Code, and directed the prosecution of the complainant under s. 211 of the Penal Code:—*Held*, that the order dismissing the complaint was illegal, the Magistrate having no jurisdiction to deal with the case or dismiss it under s. 203 of the Criminal Procedure Code without complying with the requirements of the law as laid down in ss. 200 and 202 of that Code.—LOKENATH PATRA *v.* SANYASI CHARAN MANNA, I. L. R., 30 Cal. 923.

5. JURISDICTION—The jurisdiction of the Foujdari Court is confined to cases of possession only. It is beyond their province to inquire into and ascertain the title to real estate.—MAHARAJA MAHESER SINGH *v.* THE BENGAL GOVERNMENT, 7 M. I. A. 284.

6. JURISDICTION—The effect of an order of the Foujdari Court, giving possession of real estate, is merely to prevent the occupation being disturbed by violence, and confers no right or title on the party put in possession. — KADIR BUKSH KHAN *v.* MUSSUMATAIN FUSSEEH-OON-NISSA AND MOOBARUK-OON-NISSA 5 M. I. A. 413.

7. JURISDICTION — *Magistrate—Criminal Procedure Code (Act V. of 1898), s. 145—Parties — Manager — Title — Possession—Encroachment.*] The fact that the manager, and not his employer, the zemindar, has been made a party to a proceeding under s. 145 of the Criminal Procedure Code is

Jurisdiction (*contd.*)—

a mere irregularity, or at most an error of law, which does not affect the Magistrate's jurisdiction. *Dhondhai Singh* v. *Follet*, I. L. R., 31 Cal. 48, referred to. Where a party claims no easement or customary right, any intermittent acts of encroachment on his part, such as cutting a few trees or filching some underwood, would not affect the title or possession of the superior landlord. *Framji Cursetji* v. *Goculdas Madhowji*, I. L. R., 16 Bom. 338; *Agency Company* v. *Short*, L. R., 13 App. Cas. 793, referred to. —BHOLANATH SINGH *v.* WOOD, I. L. R., 32 Cal. 287.

8. JURISDICTION — *Immoveable property dispute as to—Bundh—Possession—Title—Costs—Damages—Criminal Procedure Code (Act V. of 1898) ss. 145, 148.*] Proceedings under s. 145 of the Criminal Procedure Code were instituted with reference to a *bundh* erected by the second party upon land claimed both by the first and second parties. The Magistrate treated the case as if it were solely one of title and made an order directing the removal of the *bundh*, and he further awarded one of the parties Rs. 50 for the damage done to his crops as well as for costs in the case. *Held* that the entire order was illegal, and should be set aside, including the order as to costs — PRAYAG MAHATON *v.* GOBIND MAHATON, I. L. R. 32 Cal. 602.

9. JURISDICTION — *High seas — Offence committed on the high seas—Procedure—Penal Code (Act XLV. of 1860)—37 and 38 Vict., c. 27, s. 3.*] A Presidency Magistrate has authority to charge, convict, and sentence under the Indian Penal Code (Act XLV. of 1860), a person who has committed an offence in a British ship during her voyage on the high seas. The law applicable both as regards procedure and punishment to the Indian law.—KING-EMPRROR *v.* THE CHIEF OFFICRR OF S. S. "MUSHTARI," I. L. R., 25 Bom. 636.

10. JURISDICTION—*Reformatory school—Detention in, in lieu of sentence of imprisonment—Power of High Court to alter or set aside such sentence—Reformatory Schools Act (VIII. of 1897), ss 8, 16.*] S. 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence, in substitution of which an order for detention is made. The power of the High Court remains intact to consider the propriety or legality of any sentence passed upon a youthful offender. — REASUT *v.* COURTNEY, I. L. R., 28 Cal. 423.

11. JURISDICTION—*Costs—Order for assessment of, without notice to party affected thereby—Revision by High Court—Code of*

Jurisdiction (*contd.*)—

Criminal Procedure (Act V. of 1898), s. 148.] A Magistrate has no jurisdiction to pass an order under s. 148 of the Code of Criminal Procedure making a party liable for a certain sum as costs without notice to him, so that he may have an opportunity of contesting the same.—PROKASH CHUNDER SARKAR *v.* RAM PRASAD PATTAK, I. L. R., 28 Cal. 302.

12. JURISDICTION—*Muscat—Court of Her Majesty's Consul at Muscat—High Court's criminal revisional jurisdiction over the Consular Court—Order in Council dated 4th November 1867—Criminal Procedure Code (Act V. of 1898), s. 435.*] The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat.—*In re* RATTANSEE PURSHOTTUM, I. L. R., 24 Bom. 471.

13. JURISDICTION — *Review — Criminal Procedure Code (Act V. of 1898) ss. 145, 369.*] A Magistrate has no jurisdiction to review a final order passed by himself under s. 145 of the Criminal Procedure Code.—PARBATI CHARAN ROY *v.* SAJJAD AHMAD CHOWDHURY, I. L. R., 35 Cal. 350.

14. JURISDICTION—*Appeal—Trial of summons case — Conviction of assault and mischief on summons for Criminal Trespass—Competence of Magistrate who issued process, but did not take cognizance or direct a local investigation, to hear appeal on conviction — Transfer — Criminal Procedure Code (Act V. of 1898), ss. 192, 243, 244, 246, 529 (f), 556.*] Where an accused has been summoned for criminal trespass, it is open to the trying Magistrate, under s. 246 of the Criminal Procedure Code, to convict him of assault and mischief without re-opening the trial and following the procedure laid down in ss. 243 and 244. *Mudoosoodun Sha* v. *Hari Dass Dass* (22 W. R. Cr. 40) referred to. A Magistrate, who did not take cognizance of a complaint or order a local investigation, but, acting as the officer in charge of the *sudder* sub-division, directed the issue of summonses, holding that the investigating Magistrate had not given satisfactory reasons for recommending the dismissal of the complaint without however, expressing any clear opinion hostile to the accused, is not incompetent under s. 556 of the Criminal Procedure Code, to hear the appeal on conviction of the accused The irregularity of transferring a case, when the Magistrate is not empowered under s. 192 to do so, is cured by s. 529 (*f*). —DASARATH RAI *v.* EMPEROR, I. L. R., 36 Cal. 869.

Jurisdiction (*contd.*)—

15 JURISDICTION—*Security to keep the peace — District Magistrate — Appellate Court power of, to direct security to keep the peace in conviction by a second or third class Magistrate—Criminal Procedure Code (Act V. of 1898) s 106 (3).*] An Appellate Court cannot exercise the power given by s. 106 (3) of the Criminal Procedure Code, where the conviction has not been by a Court specified in sub-s. (*1*). *Muthiah Chetti* v. *Emperor*, I. L. R., 29 Mad. 190, *Paramasiva Pillai* v. *Emperor*, I. L. R., 30 Mad. 48, and *Mahmudi Sheikh* v. *Aji Sheikh* I. L. R. 21 Cal. 622, referred to.—EMPEROR *v.* MOMIN MALITA, I. L. R., 35 Cal. 434.

16. JURISDICTION—*High Court—Powers to revise orders directing prosecution—Jurisdiction of the Sessions Judge to set aside such orders—False charge—Improper order for prosecution—Criminal Procedure Code (Act V. of 1898), ss. 439, 476—Indian Penal Code (Act XLV. of 1860) s. 211.*] A Sessions Judge has no power to set aside an order passed by a Magistrate under s. 476 of the Criminal Procedure Code. But the High Court has power to revise such orders, whether passed by Criminal or a Civil Court, under s. 439 of the Criminal Procedure Code or under its general powers of superintendence, if a case for interference is made out; this power is not taken away by s. 476, cl. (2). *Queen-Empress* v. *Srinivasalu Naidu*, I. L. R., 21 Mad. 124 referred to. *Eranhali Athan* v. *King-Emperor*, I. L. R., 26 Mad. 98, dissented from. It is not in every case, which a Magistrate considers to be false, that he should direct under s. 476 of the Criminal Procedure Code a prosecution under s. 211, Penal Code. Each case must be judged by its own facts. Where, therefore, the Magistrate and the Judge came to different conclusions upon the evidence which was of a doubtful character and the complainant was a boy of 12 years of age, it was held that the Magistrate should not have directed his prosecution, and his order was accordingly set aside.—EMPEROR *v.* GOPAL BARIK, I. L. R., 34 Cal. 42.

17. JURISDICTION — *Dispute concerning land—Jurisdiction of Magistrate—Order on Written Statements without any Evidence—High Court, jurisdiction of—Criminal Procedure Code (Act V. of 1898), s. 145 sub-ss. (1) (4).*] Sub s. (i) is not the only provision in s. 145 of the Criminal Procedure Code, which lays down what matters relate to the jurisdiction of the Magistrate. There are other provisions in the section, the contravention of which affects his jurisdiction, and so gives the

Jurisdiction (*contd.*)—

High Court power to interfere. Where the Magistrate passed an order under s. 146 of the Code, only upon the written statements of the parties and without taking any evidence. *Held*, that the order was without jurisdiction, and that the High Court had power to set it aside. *Surjya Kanta Acharjee* v. *Hem Chunder Chowdhry* I. L. R., 30 Cal. 508, followed *Sukh Lal Sheikh* v. *Tara Chand Ta*, I. L. R., 33 Cal. 68, explained —KOLHA KOER *v.* MUNESWAR TEWARI, I. L. R., 34 Cal. 840.

18. JURISDICTION — *Criminal Procedure Code (Act V of 1898), ss. 107, 145—Initiation of Proceedings under s. 145 of the Code,—Security for keeping the peace.*] The making of a formal order under sub-s (*1*) of s 145 of the Criminal Procedure Code is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under that section. Where a notice was issued on the parties under s 107 of the Criminal Procedure Code to show cause why they should not execute a bond to keep the peace; and the Magistrate at the hearing recorded an order wherein he stated that it appeared to him that, on the facts, the case was one for the application of s. 145 of the Code, and not of s. 107, and he then proceeded to "bind down" the first party under sub-s (*6*) of s. 145. *Held*, that the expression "bind down" was not correct, and that the order was entirely bad.—SUKRU DOSADH *v.* RAM PERGASH SINGH, I. L R., 30 Cal. 443

19. JURISDICTION—*Magistrate—Criminal Procedure Code (Act V. of 1898) s. 145, cls. (1) (6)—Omission to record initiatory order—Arbitration, reference to.*] Where proceedings under s. 107 of the Criminal Procedure Code, were instituted against the parties, and on their appearance the Magistrate considering that the dispute came within s. 145 of the Code, treated the case as one instituted under the latter section, and adjourned it for the evidence of their respective claims to actual possession, without recording an order under sub-s. (1) :— *Held*, that the drawing up of a formal order under sub s. (1) was absolutely necessary to the initiation of proceedings under s. 145, and the omission to do so rendered them bad for want of jurisdiction. S. 145 does not contemplate that the question of actual possession should be delegated, even by the consent of the parties, to arbitration. It directs the Magistrate himself to receive the evidence produced by the parties, and to come to a decision in consideration thereof.—BANWARI LAL MUKRRJEE *v.* HRIDAY CHAKRAVARTI, I. L. R., 32 Cal. 552.

Jurisdiction (*contd.*)—

20. JURISDICTION — *Refusal to examine witnesses—Interference by High Court—Criminal Procedure Code (Act V. of 1898) s. 145.*] Where in a proceeding under s. 145 of the Criminal Procedure Code the trying Magistrate refused to examine certain witnesses on behalf of one of the parties, who were present in Court—*Held* that the trying Magistrate had acted in contravention of the provisions of s. 145, cl. (4) of the Code, and the High Court had power to interfere.—MANMATHA NATH MITTER *v.* BARODA PROSAD ROY CHOWDHRY, I. L. R., 31 Cal. 685.

21. JURISDICTION — *Manager or Agent, possession of — Criminal Procedure Code (Act V. of 1898) s 145.*] There is jurisdiction under s. 145 of the Criminal Procedure Code, to make an order in favour of a person who claims to be in possession of the disputed land, as agent to, or manager for, the proprietors, when the actual proprietors are not residents within the Appellate Jurisdiction of the High Court. *Jhabu Singh* v. *Rutherford*, 7 C. W. N. 208, overruled. *Newaz Ali* v. *Ram Ballabh Chakravarti*, I. L. R., 21 Cal. 916 (note) and *Brown* v. *Prithiraj Mandal*, I. L R., 25 Cal 423 distinguished.—DHONDHAI SINGH *v.* FOLLET, I L. R., 31 Cal. 48.

22. JURISDICTION — *Criminal Procedure Code (Act V. of 1898), ss. 145, 355, 356—Witness, attendance of—Process, refusal to issue—Magistrate, discretion of—High Court, power of interference by—Charter Act (24 and 25 Vict. C. 104) s. 15—Proceedings under Chap. XII. of the Criminal Procedure Code.*] Where the refusal by a Magistrate to assist one of the parties to a proceeding under Chap. XII. of the Criminal Procedure Code, in procuring the attendance of his witnesses, deprived that party of a hearing on the only question for the determination of the Court and so amounted to a denial of justice: *Held*, that the Magistrate in refusing process acted without jurisdiction. *Madhab Chandra Tanti* v. *Martin*, I. L. R. 30 Cal. 508 (note) referred to. The High Court in the exercise of general powers of supervision vested under 24 and 25 Vict., c. 104, s. 15, has power to interfere in a case like this, even if it cannot, in strictness, be said that the Magistrate acted without jurisdiction. A mere refusal, however, to summon or examine a particular witness or witnesses cited by a party, in proceedings under Chap. XII. of the Criminal Procedure Code, is not necessarily a ground for interference by the High Court. It cannot be laid down as a rule of law that proceedings under Chap. XII. of the Criminal Procedure Code should be regarded as to procedure, as summons

Jurisdiction (*contd.*)—

cases. *Hurendro Narain Singh Chowdhry* v. *Bhobani Prea Baruani*, I. L. R., 11 Cal. 762, and *Ram Chandra Das* v. *Monohur Roy*, I. L. R., 21 Cal. 29 explained.—SURJYA KANTA ACHARJEE *v.* HEM CHUNDER CHOWDHRY, I. L. R., 30 Cal. 508.

23. JURISDICTION — *Criminal Procedure Code, s 531—Proceedings in wrong place.*] S. 531 of the Code of Criminal Procedure applies to a case where a Magistrate who has authority to commit a case for trial, does so, but has not territorial jurisdiction in the place where the offence to be tried is alleged to have been committed.—RAYAN KUTTI *v.* EMPEROR, I. L. R., 26 Mad. 640.

24. JURISDICTION — *Criminal Procedure Code (Act V. of 1898) ss. 145, 146—Possession given by Civil Court — Practice.*] Where the petitioner had eight days before the institution of proceedings under s. 145 of the Criminal Procedure Code been put in possession of a portion of the disputed plots of land by the Civil Court in execution of a decree establishing his rights to the same. *Held*, it was the duty of the Magistrate in the proceedings under s. 145 of the Code of Criminal Procedure to find possession of that portion in accordance with the decree of the Civil Court. The order so far as it directs the attachment of the disputed land covered by that decree is without jurisdiction.—GULRAJ MARWARI *v.* SHEIK BHATOO, I. L. R., 32 Cal 796.

25. JURISDICTION — *Magistrate—Dispute relating to a kutchery—Initiatory Order—Omission to state the grounds of the apprehension of a breach of the peace—Reference to information obtained in a local inquiry not recorded—Order as to costs—Criminal Proeedure Code (Act V. of 1898) ss. 145, cl.* (1), *148.*] If the Magistrate omits in the initiatory order under s. 145, cl. (1) of the Criminal Procedure Code to state the grounds of his being satisfied as to the likelihood of a breach of the peace, the final order is without jurisdiction. Where, therefore, the initiatory order merely referred to some information, which was obtained during the course of a local inquiry held by himself, but had not been reduced into writing: *Held* that the proceedings under s. 145 were bad in law. In a case initiated upon a police report or other information, which has been reduced into writing, reference can be made to the materials upon which the Magistrate acted, to ascertain whether there were in fact grounds upon which he might have acted, but even then it is his duty to state the grounds, upon which he was satisfied that there was a likelihood of a breach of the peace.—*Queen-Empress* v. *Gobind Chandra Dass*, I. L. R., 20 Cal. 520; *Dhanput Singh* v. *Chatterput Singh*, I. L. R., 20 Cal. 513; *Mohesh Sowar* v *Narain Bag*, I. L. R., 27 Cal. 981 and *Jagomohan Pal* v. *Ram Kumar Gope*, I. L. R., 28 Cal. 416, referred to.—NITTYANAND ROY *v.* PARESH NATH SEN, I. L. R. 32 Cal 771.

26. JURISDICTION — *Jurisdiction of Magistrate in Mysore to try and convict an European British subject for an act amounting to an offence under the Mysore law, but not an offence under the Indian Penal Code.*] An European British subject was charged and tried before, and convicted by a First-class Magistrate and Justice of the Peace appointed, under the Extradition Act, 1879, in and for the territories of Mysore. The act for which he was so tried and convicted (namely being in possession of mining materials) constituted an offence under the Mysore Mines Regulation, but was not an offence under the Indian Penal Code. It was contended, in revision, in the Madras High Court that the conviction was wrong on the ground that a justice of the Peace appointed under the Extradition Act has no authority to deal with an offence committed by an European British subject against a law of the Mysore State:—*Held*, that the Magistrate had power to try the accused, or to commit him for trial in the Madras High Court. *Per* Sir ARNOLD WHITE, *C. J.*—S. 8 of the Act of 1879 extending to European British subjects in States in India in alliance with His Majesty the law relating to offences and to criminal procedure for the time being in force in British India ought not to be read so as to restrict the powers of the Governor-General which are declared by s. 4 and which may be delegated to his officers under s. 6. The word "offences" as used in s. 6 of the Act of 1879 is not restricted to offences as defined by s. 40 of the Indian Penal Code. Nor is it restricted to any definition of "offence" to be found in the Code of Criminal Procedure, although, as a matter of fact, the present definition of "offence" in the Code of Procedure [s. 4 (o)], which is the same as that contained in the General Clauses Act, is sufficiently wide to include the wrongful act with which the accused in the present case was charged.—ADAMA *v.* EMPEROR, I. L. R., 26 Mad. 607.

27. JURISDICTION — *High Court—Power to revise an order of acquittal at the instance of a private party—Decision on a point of local jurisdiction and not on the merits—Criminal Procedure Code (Act V. of 1898) ss. 432, 439 (5)—Practice.*] S. 439 (5) of the Criminal Procedure Code does not bar the jurisdiction of the High Court to interfere with an order of acquittal on an appli-

Jurisdiction (*contd.*)—

cation made at the instance of a private party. Where the Appellate Court set aside a conviction and sentence on the ground that the place of occurrence was outside the local limits of the trying Magistrate's jurisdiction overlooking the provisions of s. 531 of the Code, the High Court set aside the order of acquittal and directed a re-hearing of the appeal. What the Appellate Court has to find is whether the offence, of which an accused is convicted, has been made out not with reference to any dispute as to jurisdiction, but on the merits and in accordance with the evidence. —KANGALI SARDAR *v.* BAMA CHARAN BHATTACHARJEE, I. L. R., 38 Cal. 786.

28. JURISDICTION—*Offence committed in British India—Accused committed to Sessions—Transfer of territory to native State—Accused discharged for want of jurisdiction—Revision.*] Certain persons were charged with committing an offence at a place in British India and were committed to the Sessions Court of Mirzapur, the case being subsequently transferred to the Sessions Court of Benares. Before trial, however, the place where the offence had been committed became part of the newly constituted State of Benares. *Held* that the Sessions Court, whether of Mirzapur or Benares, was not deprived of jurisdiction to dispose of the case which had been committed to it for trial, inasmuch as at the time of the transfer to the State of Benares of the place where the alleged offence had been committed the accused were in British India in custody in point of law, if not in fact, of a Court of competent jurisdiction. *Emperor* v. *Mahabir*, I. L. R., 33 All 578, followed. *Damodhar Gordhan* v. *Deoram Kanji*, I. L. R., 1 Bom. 367 distinguished — EMPEROR *v.* RAM NARESH SINGH, I. L R., 34 All. 118.

29. JURISDICTION— *Magistrate — Charge with a view to commitment, cancellation of —Criminal Procedure Code (Act V. of 1898), s. 213 (2)—Cross-examination of prosecution witnesses after framing of the Charge, effect of—"Witnesses for the defence" interpretation of—Practice.*] It is open to a Magistrate, having drawn up a charge against an accused person with a view to his commitment to the Court of Session, to allow the accused to cross-examine the witnesses for the prosecution and, as the result, to cancel the charge. The words "witnesses for the defence" in s. 213 (2) are wide enough to cover evidence elicited in cross-examination of witnesses for the prosecution. *Surjya Narain Singh, In re*, 5 C. W. N. 110, referred to.—JOGENDRA NATH MOOKHRRJEE *v.* MATI LAL CHUCKERBUTTY I. L. R., 39 Cal. 885.

Jurisdiction (*contd.*)—

30. JURISDICTION—*Magistrate — Cognizance on information received by him in another public capacity—Legality of the institution of Criminal proceedings in such case—Criminal Procedure Code (Act V. of 1898) s. 190 (1) (c).*] *Held per* Stephen, J. (Carnduff J. *dubitante*), that a Magistrate who has received information in another public capacity, *e g*, as manager of an encumbered estate, of the offence of mischief by cutting timber from the estate forest, cannot act on it in his capacity of a Magistrate and initiate criminal proceedings under s. 190 (1) (*c*) of the Criminal Procedure Code. *Thakur Pershad Singh* v *Emperor*, 10 C. W. N. 775, referred to. An order, on taking cognizance of a case under s. 426 of the Penal Code, directing the attachment of trees the subject of the alleged offence, is without jurisdiction.—LAKHI NARAYAN GHOSE *v.* EMPEROR, I. L. R., 37 Cal 221.

31. JURISDICTION—*Of Criminal Court — Order directing prosecution for instituting a false case—False information to the police —Subsequent complaint before the Magistrate—Grounds of the exercise of such jurisdiction—Criminal Procedure Code (Act V. of 1898), ss. 195 (b) and 476.*] S. 476 of the Criminal Procedure Code must be read subject to the restrictions contained in s. 195 (*b*), and does not, therefore, empower a Court to direct a prosecution for making a false charge before the police. *Dharmadas Kawar* v. *King-Emperor*, 7 C. L. J 373, followed. *Lalji Gope* v. *Giridhari Chaudhry*, 5 C. W. N. 106, referred to. *In re Devji*, I. L. R., 18 Bom 581; *Akhil Chandra De* v. *Queen-Empress*, I. L. R., 22 Cal. 1004; *Abdul Rahman* v. *Emperor*, 7 C. L. J. 371, and *Haibat Khan* v. *Emperor*, I. L. R., 33 Cal. 30, distinguished. But if the informant, upon the police reporting the information to be false, subsequently petitions the Magistrate for a judicial inquiry, he must be taken to have preferred a complaint, and s. 476 would then apply. *Queen-Empress* v. *Sham Lall*, I. L. R., 14 Cal 707; *Queen-Empress* v. *Sheik Beari*, I. L. R., 10 Mad. 232, and *Jogendra Nath Mookerjee* v. *Emperor*, I L. R., 33 Cal. 1, referred to. No sanction should be granted or prosecution directed, unless there is a reasonable probability of conviction, though the authority granting a sanction under s. 195, or taking action under s. 476, should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed. *Ishri Prasad* v. *Sham Lal*, I. L. R., 7 All. 871; *Kali Charan Lal* v. *Basudeo Narain Singh*,

Jurisdiction (*contd.*)—

12 C. W. N. 3; and *Queen* v. *Baijoo Lal*, I. L. R., 1 Cal. 450, referred to. Where there had been prolonged litigation between the petitioner and the opposite party, in which the former had been successful, so that the case was by no means improbable, and two Magistrates had, in the course of the judicial investigations preceding the trial, accepted the prosecution story as substantially true, and the Assessors had only found the case not proved:—*Held*, that, under the circumstances, it was not a proper case for a prosecution under s. 476 of the Code.—JADU NANDAN SINGH *v.* EMPEROR. I. L. R., 37 Cal. 250.

32. JURISDICTION OF MAGISTRATE—*Criminal Procedure Code (1898) ss. 255 and 349—Accused pleading guilty—Conviction without taking evidence.*] In this case the accused was tried by a third class Magistrate before whom he pleads guilty to a charge of theft in a house; thereupon he was sent to the Sub-divisional Magistrate for punishment under s. 349 but the Sub-divisional Magistrate sent the case back to the third class Magistrate to take the accused's defence. *Held*, that the Sub-divisional Magistrate shonld not send the case back to the third class Magistrate and if there had been any need to take the accused's defence the Sub divisional Magistrate ought to do it himself. *Held*, also that s 349 does not give him any power to return the case to the third class Magistrate for the purpose of supplying omissions. Sub-s. 2 indicates the course he should adopt.—EMPEROR *v.* TAW PYN, 3 L. B. R. 279, 5 Cr. L. J. 416.

33. JURISDICTION — *Receiver — Party—Proceedings under s. 145 of the Code of Criminal Procedure (Act V. of 1898)—Possession of Receiver.*] A Receiver appointed by the High Court cannot be made a party to a proceeding under s. 145 of the Code of Criminal Procedure merely in his capacity of Receiver, and a Magistrate has no jurisdiction to interfere with him in respect of his possession of the estate, without the sanction of the Court, his possession being the possession of the Court. *Ex parte Cochrane*, (I. L. R., 20 Eq. 282); *William Russell* v. *The East Anglian Railway Company*, (8 Mac & G. 104), and *Ames* v. *The Trustees of the Birkenhead Docks*, (20 Beav. 332), referred to. *Semble.*—The Receiver can neither sue nor be sued without the leave of the Court. *Miller* v. *Ram Ranjan Chakravarti*, (I. L. R., 10 Cal. 1014), referred to.—A. M. DUNNE *v.* KUMAR CHANDRA KISORE, I. L. R., 30 Cal. 593

34. JURISDICTION—*Receiver — Party to Criminal Proceedings—Leave of Court—"Owner"—Calcutta Municipal Act (Ben. Act III. of 1899), ss. 3, 320, 574.*] A Receiver appointed by the High Court is not the "owner" of the property of which he has been appointed Receiver, within the meaning of s. 3, cl. (32), of Ben. Act III. of 1899; nor can he be made a party to any suit or proceeding without the leave of the Court appointing him. *Dunne* v. *Kumar Chandra Kisore*, (I. L. R., 30 Cal. 593; 7 C. W. N. 390), referred to.—W. R. FINK *v.* THE CORPORATION OF CALCUTTA, I. L. R., 30 Cal. 721.

35. JURISDICTION—*Scheduled Districts—Reference and appeal in a criminal case from the Scheduled Districts—Act XI. of 1846—Scheduled Districts Act (XIV. of 1874).*] The Collector of Khandesh in his capacity of Political Agent for the Mehwasi Estates convicted the accused of murder committed at a village in the Scheduled Districts, and sentenced him to transportation for life. He then forwarded the proceedings to Government for confirmation. The accused also appealed to Government against the conviction and sentence. The Government thereupon directed the Political Agent to submit the proceedings to the High Court under Rule 35 of the Rules promulgated in 1855 under s. 3 of Act XI. of 1846. The appeal presented by the accused was also forwarded to the High Court. The question arose as to whether the High Court had jurisdiction to dispose of the reference, the appeal being rejected as not allowed. *Held* that the High Court had jurisdiction.—IMPERATRIX *v.* RATNYA, I. L. R., 25 Bom. 667.

Jury—

1. JURY—*Penal Code, ss. 395, 411—Charges of dacoity and receiving stolen property—Charge to jury—Possession of stolen property — Misdirection.*] On the trial of an accused before a Judge and Jury at a Court of Session, for dacoity and receiving stolen property, the Judge, in his charge to the Jury, directed them that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity, was sufficient to justify them in convicting the accused of the dacoity:—*Held*, on appeal, that this was a misdirection. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the Jury and should not have been put to them in the positive way which the Judge adopted.—GUZZALA HANUMAN *v.* EMPEROR, I. L. R., 26 Mad. 467.

2. JURY—*Criminal Procedure Code, ss. 269 (3), 309—Sessions Judge sitting with jury—Charges of theft and administering drug—Opinion of only two jurors taken as assessors on second charge—Validity.*] At the trial of an accused, before a Sessions

Jury (*contd.*)—

Judge and a jury, for theft in a building (an offence triable by a jury) and for administering a noxious substance (an offence triable by assessors), the Judge took the verdict of the jury on the former charge, and took the opinion of only two of them (as assessors) on the latter :—*Held*, that, under ss. 269 (3) and 309 of the Code of Criminal Procedure, the Judge should have taken the opinion of all the jury as assessors, on the latter charge, and that his failure to do so was not an "omission" or "irregularity" to which s. 537 applied.—RAMAKRISHNA REDDI *v.* EMPEROR, I L. R., 26 Mad. 598.

3. JURY—*Criminal Procedure Code (Act V. of 1898), ss. 423 (2), 537—Trial by jury—Misdirection—Verdict and order of acquittal—Appeal against acquittal—Jurisdiction of High Court to consider the evidence—Evidence of accomplices.*] In a charge against an Inspector of Salt and Abkari of extortion and bribery, in a Court of Session, the first witness for the prosecution deposed that when he complained to the accused of delays which were taking place in weighing salt, the accused told him he ought to make the customary present of Rs. 100 or Rs. 50 according to the amount of salt to be weighed The witness stated that he had refused to pay the bribe at that time, but that on the following day, when the accused stated that the weighing would only be properly proceeded with if the present were made, he consented, and the accused agreed to send his peon (who was charged with abetment) for the money. According to the witness, the peon came to his shop and was paid Rs. 50 by his accountant by his order and in his presence, and in the presence of two other persons who were in the employment of the witness. The prosecution evidence, if true, only showed that these two other persons had witnessed the transaction without taking any part in it. The accountant and the other two persons were called and gave evidence as second, third and fourth witnesses, respectively, for the prosecution. Some entries in account-books were relied on in support of the oral evidence of the witnesses, but they were challenged by the accused as false entries, and they were, in fact, discredited by the High Court. The writer of them was called as the fifth prosecution witness, and they had been made after the alleged transaction was over. The Sessions Judge, in his charge to the Jury, warned them against accepting the evidence of accomplices without corroboration in material particulars. He said that the first and second witnesses were certainly accomplices, and that the third, fourth and fifth

Jury (*contd.*)—

witnesses had put themselves practically in the same position as accomplices and that their evidence also required corroboration before the jury could act on it. The jury returned a verdict of not guilty, and the Sessions Judge acquitted the accused. Upon an appeal being preferred by the Public Prosecutor against the acquittal, on the ground of misdirection :—*Held*, that as regards the first and second witnesses, the charge was accurate; but that the description of the third, fourth and fifth witnesses was a misdirection : *Held further*, that it was not obligatory on the High Court, in such circumstances, to order further enquiry or a retrial and that the High Court could consider the evidence and if, after so doing, it formed the opinion that the evidence could not, in any proper view of the case, support a conviction, it would not alter or reverse the order of acquittal. *Queen-Empress* v. *Magan Lal* (I. L. R., 14 Bom. 115), approved. *Elahee Buksh's Case*, [5 Suth. W. R., (Cr.), 86], followed. *Wafadar Khan* v. *Queen-Empress*, (I L. R., 21 Cal. 955), and *Ali Fakir* v. *Queen-Empress*, (I. L. R., 25 Cal. 230), commented on.—EMPEROR *v.* EDWARD WILLIAM SMITHER, I. L. R., 26 Mad. 1.

4. JURY—*Trial by Jury—Procedure—Delivery of verdict—Verdict, partial record of—Criminal Procedure Code (Act V. of 1898), ss. 300, 301, 303—Prejudice—New trial.*] Where after the delivery of an unanimous verdict of the jury, convicting the accused of the charge of rioting in connection with certain land and the crops thereon, possession of which was claimed by the complainant as well as by the accused, the foreman of the jury attempted to add that "the land and the crops are all theirs" (meaning that they belonged to the accused), but was stopped by the Sessions Judge on the ground that the verdict was quite clear in its terms, and it was therefore unnecessary to hear anything further from them : *Held*, that it was undesirable to stop the jury at such a stage of the proceedings, that the words the foreman attempted to add to the verdict were very material, and that the accused having been seriously prejudiced by the procedure adopted by the Sessions Judge, there should be a new trial. —NARAYAN CHANGA *v.* EMPEROR, I. L. R., 30 Cal. 485.

5. JURY—*Summing up—Defective direction—Contentions placed before the jury—Judge should not omit pointedly to call attention of the jury to matters of prime importance especially if they favour the accused.*] A Sessions Judge in summing up is entitled to have regard to the elaboration

Jury (*contd.*)—

and skill with which the rival contentions have been placed before the jury by the advocates on both sides, but he should not in doing so omit pointedly to call the attention of the jury to matters of prime importance especially if they favour the accused, merely because they have been discussed by the advocate.—EMPEROR *v.* MALGOWDA, I. L. R., 27 Bom. 644.

6. JURY—*Sessions Judge—Misdirection—Inadmissible evidence—Criminal Procedure Code (V. of 1898), ss. 418, 423 (2).*] Where a charge to the jury by the Sessions Judge is, upon the whole, favourable to the accused, and most of the points of importance in favour of accused are more or less dealt with in the charge, the mere fact that some of the points are not so amplified as they might have been does not amonnt to a misdirection. Before the High Court can interfere with the verdict of a jury on the ground that the evidence of accused's confession was wrongly admitted, it must be satisfied, firstly, that the verdict is erroneous; secondly, that the erroneousness was caused either by the Judge's misdirection to the jury as to that evidence or by a misunderstanding on their part of the law as to it as laid down by the Judge. Where material evidence which ought not to be admitted is admitted and the jury are placed in possession of it, there is an error in law in the trial under s. 418 of the Criminal Procedure Code (Act V. of 1898), and there is a misdirection of law when the Judge tells the jury that it is evidence which they can consider and on which they can, if they think proper, convict the accused. The fact that after putting the jury in possession of the inadmissible evidence the Judge in his charge goes on also to point out circumstances which would justify the jury in disbelieving the wrongly admitted evidence does not make the misdirection less a misdirection. Where evidence which the law says shall not be admitted is let in with other evidence legally admissible, and where the former is of a material character, it would be mere speculative refinement to hold that the jury must have, in convicting the accused, relied upon the latter and rejected the former.—EMPEROR *v.* WAMAN, I. L. R., 27 Bom. 626.

7. JURY—*Criminal Procedure Code (Act V. of 1898), ss. 303, 304—Judge—Misunderstanding the law — Verdict mistaken or ambiguous—Powers of the Judge to question the jury.*] S. 304 of the Criminal Procedure Code (Act V. of 1898) obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. It has no

Jury (*contd.*)—

application where there is no accident or mistake in the delivery of the verdict; and the mistake lies in the misunderstanding of the law by the jury. If such a mistake results in an erroneous verdict, it can be corrected only by the Judge disagreeing with the jury and referring the case under s. 307 of the Code to the High Court. *Per Curiam*:—"There is no provision in the Code of Criminal Procedure (Act V. of 1898) which empowers the Judge to question the jury as to their reasons for a unanimous verdict when there is nothing ambiguous in the verdict itself, and no lurking uncertainty in the minds of the jury themselves regarding it. S. 303 of the Code limits the power of the Judge to question to cases in which it is necessary to ascertain what the verdict of the jury is—that is, where the verdict being delivered in ambiguous terms or with uncertain sound their meaning is not clear."—EMPEROR *v.* KONDIBA, I. L. R., 28 Bom. 412.

8. JURY—*Misdirection.*] Where the Sessions Judge in his charge to the Jury omitted to state that the statement of one accused is not admissible against another co-accused: *Held* that it was a material error justifying the setting aside of the conviction and the order of a re-trial, although the Judge dealt separately with the evidence against each of the accused. *Held* also that it is a misdirection to the jury when the Judge in his charge tells the jury his own opinion, but omits to state that they are at liberty to draw their own conclusions of facts.—SURENDRA NATH MITRA *v.* EMPEROR, 10 C. W. N. 153.

9. JURY—*Criminal Procedure Code, s. 397—Procedure of High Court on reference under—'Opinion' of jury, what is.*] Where the Sessions Judge disagreeing with the jury, refers a case to the High Court under s. 307 of the Code of Criminal Procedure, the High Court is to form its own opinion on the evidence. The 'opinion' of the jury in s. 307 of the Code of Criminal Procedure is the conclusion of the jury, and not the reasons on which that conclusion is based. *Per* Sir SUBRAHMANIA AYYAR, Offg. *C. J.*, and BODDAM, *J.*—In references under s. 307 of the Code of Criminal Procedure, although it may be expedient to have before the Court the reasons of the jury for the view taken by them, when any have been given, the circumstance that no such reasons have been ascertained does not warrant this Court to decline to go into the evidence and to arrive at its own judgment, after giving due weight to the views taken by the Judge and the jury as to the guilt or innocence of the

Jury (*contd.*)—

accused.—EMPEROR *v.* CHELLAN, I. L. R., 29 Mad. 91.

10. JURY — *Trial by — Misdirection — Dying declaration, admissibility of—Expression of opinion by Judge, on facts—Omission to point out material evidence—Charge, heads of—Penal Code (Act XLV. of 1860) s. 325.*] A dying declaration recorded in the absence of the accused, and by a Magistrate other than the inquiring Magistrate, is not admissible until it is proved by the recording officer. An expression of opinion by the Judge on the facts without telling the Jury that they are at liberty to form their own opinion in regard thereto, and also without cautioning them to give the accused the benefit of a reasonable doubt, amounts to a misdirection. Where the medical opinion was that the injuries of the deceased were not, in the case of a man in ordinary health, dangerous to life: *Held*, that the Judge should have specially called the attention of the Jury to such opinion. Where the accused were charged under ss. 147, $\frac{149}{304}$, $\frac{149}{325}$ $\frac{149}{323}$ of the Indian Penal Code: *Held* that they could not be convicted under s. 325 of the Penal Code as they had not been called upon to meet such a charge, and it was not minor to, or included in, a charge under s. $\frac{149}{325}$ of the Code. *Ram Sarup Rai* v. *Emperor*, 6 C. W. N. 98, followed. It is not only desirable but necessary that the charge should be recorded in an intelligible form and with sufficient fulness to satisfy the Appellate Court that all points of law arising in the case were clearly and correctly explained to the Jury. The omission to instruct the Jury as to their verdict, if they found that there was no unlawful assembly but that hurt was caused by any one or more of the accused, is a serious misdirection.—PANCHU DAS *v.* EMPEROR, I L. R., 34 Cal. 698.

11. JURY—*Trial by—Misdirection— Culpable homicide—Proper charge in case of culpable homicide—Direction as to truth of plea of accused—Misrepresentation as to the effect of medical evidence—Expression of opinion by Judge.*] The omission by the Judge to lay specifically before the Jury, in a case of culpable homicide, the question whether in causing death the accused had the intention to cause death or such injury as was likely to cause death, or the knowledge that he was likely to do so, though in the earlier part of the charge he had explained generally the terms "murder" and "culpable homicide" and had pointed out the distinction, is a material misdirection. The omission to direct the Jury to consider the truth of the plea ot some of

Jury (*contd.*)—

the accused that they were not present at the occurrence, before convicting them, is a misdirection. Misrepresentation of the effect of the medical evidence is a misdirection. It is a misdirection for the Judge to express his opinion on various questions of fact without telling the Jury that his opinion is not binding on them and that they are the sole judges of fact.—NATABAR GHOSE *v.* EMPEROR, I. L. R 35 Cal. 531.

12. JURY—*Criminal Procedure Code (Act V. of 1898), ss. 133, 135—Order of Magistrate for removal of unlawful obstruction—Application for appointment of a jury—Effect of verdict of jury.*] Where a person against whom an order has been made under s. 133 of the Criminal Procedure Code applies for a jury under s 135 of the Code, the applicant is bound by the verdict of the jury, and cannot afterwards raise such a plea as that the obstruction was caused in the exercise of a *bona-fide* claim of right.—*In re* LACHMAN, I. L. R., 22 All. 267.

13. JURY — *Criminal Procedure Code (Act V. of 1898), ss. 269 (1), 536 (2,—Order directing trial by jury—"Particular class of offences"—Revocation of order—Jury case tried by assessors—Omission to take objection before finding recorded—Validity of trial.*] By s. 269 of the Criminal Procedure Code, the Local Government may, with the previous sanction of the Governor-General in Council by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order. In the Fort St. George Gazette, dated 30th August 1899, it was notified that, whereas by order previously made, the trial of persons charged with certain offences should in certain districts of the Presidency, including that of Tinnevelly, be by jury; and whereas disturbances known as the anti Shanar disturbances had taken place in the districts of Tinnevelly and Madura, and certain persons stood committed for trial, and others might thereafter be similarly committed in connection therewith, the Governor in Council, with the previous sanction of the Governor-General in Council, directed, under s. 269 of the Code of Criminal Procedure, that the said previous orders be revoked as regards the persons referred to, and that such persons should be tried with the aid of assessors, and not by jury. Certain persons having been so tried for offences under ss. 148, 454, 395, and 323 of the Penal Code, one assessor gave it as his opinion that none of them were guilty, the other assessor finding some of them not

Jury (*contd.*)—
guilty. The Additional Sessions Judge convicted and sentenced all the accused, whereupon the objection was taken, on appeal, in the High Court, that the trial should have been by jury, and not with the aid of assessors, and that the conviction should therefore be set aside. The objection was not taken at the trial. *Held* that the omission to take objection to the trial before the Court had recorded its findings was fatal to the contention now urged that the trial was invalid. *Held further* that, even assuming that objection had been duly taken, the offences connected with the outbreak had been rightly treated as a "class of offences," and that it was competent to the Government, with the consent of the Governor-General in Council, to revoke the previous notification so far as it related to that class.—QUEEN-EMPRESS *v.* GANAPATHI VANNIANAR, I. L. R., 23 Mad. 632.

14. JURY—*Right of trial by—Interference with the right—Governor General in Council, powers of—Indian Councils Act* (*24 & 25 Vic., c. 67*) *s. 22, proviso—European British subject, rights of—Waiver—Order of Local Government authorising complaint of certain offences—Commitment on charge for other offences—Jurisdiction, want of—Local Government, powers of—Delegation of powers—Charges against members of a secret society — Misjoinder—Same transaction—Confessions, admissibility of—Confessions made during police investigation and to Magistrate subsequently holding inquiry—Examination of accused —Eliciting statements by questions—Admissions to the police—Handwriting, modes of proof of—Comparison of handwriting —Leading questions—Criminal Procedure Code* (*Act V. of 1898*) *ss. 164, 196, 235, 239, 342, 364, 447, 454, 532—Evidence Act* (*I. of 1872*) *ss. 21, 25, 29, 47, 67, 73—Waging war—Conspiracy to wage war—Penal Code* (*Act XLV. of 1860*) *ss. 121, 121A.*] The Criminal Procedure Code, in so far as it interferes with the mode of trial by Jury, is not *ultra vires* under the proviso to s. 22 of the Indian Council's Act (24 & 25 Vic., c. 67). *King-Emperor* v. *Kartik Chandra Dutt*, unreported, followed. *In the Matter of Ameer Khan*, 6 B. L. R. 392 and 459, approved of. An European British subject can, under s. 454 of the Code, relinquish his right to be dealt with as such. Where the Magistrate explained to such a person the nature of the charges framed against him, and his rights under ss. 447 and 450, and then asked him whether he claimed to be dealt with as such, and the latter stated that he did not claim the right:—*Held*, that he had relinquished his right. *In re Quiros*, I. L. R., 6 Cal. 83, *Queen-Empress* v. *Grant*, I. L. R., 12 Bom. 561, *Queen-Empress* v. *Bartlett*, I. L. R., 16 Mad. 308, followed. Where an order under s. 196 of the Criminal Procedure Code authorized a particular police officer to prefer a complaint of offences under ss. 121A., 122, 123 and 124 of the Penal Code, "*or under any other section of the said Code which may be found applicable to the case,*" and the examination of the complainant also referred to the same sections:—*Held*, that no complaint under s. 121 of the Penal Code was thereby authorized by the Local Government or in fact preferred, that the Magistrate had no power to commit thereunder, and that the defect was not cured by a subsequent order obtained while the case was before the Sessions Court, authorizing a complaint under the section which was not in fact made thereafter; nor did s. 532 of the Criminal Procedure Code apply in such a case. *Sham Khan's case*, Punj R. Cr. J. No. 16, approved of. *Queen-Empress* v. *Morton*, I. L. R., 9 Bom. 288, distinguished; and *Queen Empress* v. *Bal Gangadhar Tilak*, I. L. R., 22 Bom. 112, dissented from. The Local Government cannot delegate to any other body or person the controlling power and discretion of determining whether cognizance shall be taken by the Court of an offence mentioned in s. 196 of the Criminal Procedure Code, and its judgment must be specifically directed to the particular section and no other, under which the prosecution is to be carried on, and the order or authority should be preceded by a deliberate determination in this respect. An order authorizing a complaint under certain specified sections "*or under any other sections found applicable*," if it means found by any one other than Government, involves a delegation which cannot be sustained. Where the accused were all alleged to have been members of a secret society, with its head-quarters in Maniktolla in the suburbs, and its places of meeting in Calcutta and elsewhere, and to have joined in the unlawful enterprise, and with others, known and unknown, to have conspired to wage war or to deprive the King of the sovereignty of British India, and to have collected arms and ammunition with such intent and to have actually waged war:—*Held*, that the joint trial of the accused on charges under ss. 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. A confession under s. 164 of the Criminal Procedure Code must be made either in the course of an investigation under Chapter XIV. or after it has

Jury (*contd.*)—
ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation. Where a number of persons were arrested on the 1st May, and the confessions of some of them were recorded on the 4th and 5th, while others were brought in subsequently and their confessions taken while the police investigation was then actually going on, and on the 17th an order under s. 196 was obtained and the police report sent in, and on the next day the examination of the prosecution witnesses begun:—*Held*, that the Magistrate did not take cognizance under s. 190 of the Code, nor did the inquiry commence on the 4th, and that the confessions were taken in the course of an investigation under Chapter XIV. The fact that the Magistrate who has taken the confessions, afterwards holds the inquiry, does not, under s. 164, constitute the recording of the confessions an examination of the accused in the course of it and at its commencement. *Empress* v. *Anuntram Singh*, I. L. R., 5 Cal. 954, and *Empress* v. *Yakub Khan*, I. L. R., 5 All. 253, declared obsolete. *Sat Narain Tewari* v. *Emperor*, I. L. R., 32 Cal. 1085, distinguished. S. 164 includes confessions taken by a Magistrate who afterwards holds such inquiry or trial. *Empress* v. *Anuntram Singh*, I. L. R., 5 Cal. 954 and *Reg.* v. *Bai Ratan*, 10 Bom. H. C. 166, declared obsolete on the point. Ss. 164, 342 and 364 of the Code are not exhaustive, and do not limit the generality of s. 21 of the Evidence Act as to the relevancy of admissions. *Queen-Empress* v. *Narayen*, Ratan Lal, Unrep. Cr. C. 679, referred to. The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under s. 164 of the Criminal Procedure Code or s. 29 of the Evidence Act, though such fact may be material on the question of its voluntariness. Methods of proving handwriting discussed. A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. S. 73 of the Evidence Act does not sanction the comparison of any two documents, but requires, first, that the standard writing shall be admitted or proved to be that of the person to whom it is attributed; and, secondly, that the disputed writing must *itself purport* to have been written by the same person. A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive, and especially so when made by one not conversant with the subject and without guidance from

Jury (*contd.*)—
the arguments of Counsel and evidence of experts. *Phoodee Bibee* v. *Gobind Chunder Roy*, 22 W. R. 272, referred to. The value of expert evidence of hand-writing discussed. *Reg* v. *Harvey*, 11 Cox C. C. 546, referred to. To constitute an admission, the document need not be written by the party against whom it is used: it is sufficient if it is found in his possession, and his conduct thereto creates an inference that he was aware of its contents and admitted their accuracy; but, unless this is done, the document cannot be used against him as proof of its contents. What conduct would properly give rise to such inference depends on the facts of each case. The mere fact of possession of letters is not of much value, unless it is shown that their contents were recognized and adopted by the replies elicited or the conduct inspired by them. The expression "*wages war*" in s. 121 of the Penal Code must be construed in its ordinary sense, and a conspiracy to wage war, or the collection of men, arms and ammunition for that purpose, is not waging war. An agreement between two or more persons to do all or any of the unlawful acts mentioned in s. 124A of the Penal Code is an offence, and the fact of the purpose not being immediate is only material in connection with s 95. No proof is necessary of direct meeting or combination, nor need the persons be brought into each other's presence; but the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Nor is it necessary that all the accused should have joined in the scheme from its inception. Eliciting answers from witnesses while under examination-in-chief or re-examination, by leading questions, deprecated. *Per* CARNDUFF J., Regard being had to the definition of "proved" in s. 3 of the Evidence Act, "moral conviction," provided it is based exclusively on evidence that is admissible, is not distinguishable from "legal proof." Save when an accused person is being examined under s. 342 of the Criminal Procedure Code, there is nothing to prevent a Magistrate from eliciting information from him by independent enquiry so long as the information is voluntarily given. A statement by an accused to the police, which tells against him but does not amount to an admission of guilt, is admissible in evidence. Each case must be decided as it arises with reference to the question whether the particular statement is or is not a confession. *Queen* v. *Macdonald* 10 B. L. R. App. 2, *Empress* v. *Dabee Pershad*, I. L. R., 6 Cal. 530, *Queen* v. *Amir Khan*, 9 B. L. R. 36, 72 and *Emperor* v. *Mahomed Ebrahim*, 5 Bom.

Jury (*contd.*)—

L. R. 312, referred to. *Queen* v. *Hurribole Chunder Ghose*, I. L. R., 1 Cal. 207, *Queen-Empress* v. *Mathews*, I. L. R., 10 Cal. 1022, *Queen-Empress* v. *Meher Ali Mullick* I. L. R., 15 Cal. 589, *Imperatrix* v. *Pandharinath*, I. L. R., 6 Bom. 34, and *Queen-Empress* v. *Javecharam*, I. L. R., 19 Bom. 363, discussed and distinguished. Handwriting may, in addition to the usual methods, be proved by circumstantial evidence under s. 67 of the Evidence Act, which prescribes no particular kind of proof. *Neel Kanto Pandit* v. *Juggobundhoo Ghose*, 12 B. L. R. App. 18, *Abool Ali* v. *Abdoor Ruhman*, 21 W. R. 429 and *Abdulla Paru* v. *Gannibai*, I. L. R., 11 Bom. 690, referred to.—BARINDRA KUMAR GHOSE *v.* EMPEROR, I. L. R., 37 Cal. 467,

Justices of the Peace—

JUSTICES OF THE PEACE—*Powers of—In trials of European British subjects.*] The powers of Magistrates of the first class who are Justices af the Peace and European British subjects are the powers referred to in s. 36 of the Code of Criminal Procedure of 1898 as 'hereinafter conferred upon them and specified in the third schedule' and styled 'ordinary powers.' They do not include powers with which by virtue of s. 37 of the Code a Magistrate of the first class may be invested by the authorities mentioned therein.—LOGAN *v.* ROMER, I. L. R., 34 Mad. 343.

K.

Kidnapping—

1. KIDNAPPING—*Kidnapping from lawful guardianship—Completion of such offence — Whether a continuous offence— Constructive possession—Penal Code (Act XLV. of 1860), ss. 360, 361, 363.*] J, a minor girl, was taken away from her husband's house to the house of R, and there kept for two days. Then one M came and took her away to his own house, and kept her there for twenty days and subsequently clandestinely removed her to the house of the petitioner, and from that house the petitioner and M took her through different places to Calcutta. The petitioner was convicted under s. 363 of the Penal Code for kidnapping a girl under 16 years of age from the lawful guardianship of her husband. *Held* (by the majority of the Full Bench) that the taking away out of the guardianship of the husband was complete before the petitioner joined the principal offenders in taking the girl to Calcutta, and that the petitioner, therefore, could not be convicted under s. 363 of the Penal Code. *Held*, further, that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as she is kept out of such guardianship. *Per* RAMPINI, *J.*—The offence of kidnapping under s. 363 is not necessarily or in all cases complete as soon as the minor is removed from the house of the guardian. When the act of kidnapping is complete, is a question of fact to be determined according to the circumstances of each case.—NEMAI CHATTORAJ *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 1041.

2. KIDNAPPING—*Penal Code (Act XLV. of 1860), ss. 361, 363, 366—Kidnapping from lawful guardianship—"Lawful guardian" —Continuance of Parent's possession though physical possession temporarily with another.*] S, a girl of the age of eight years, lived ordinarily under the guardianship of her father. A sister of S was married to a nephew of one K and, with her husband, lived in the house of K. S, with her father's knowledge and consent, visited her sister in K's house, and had remained there for about a month when four brothers (being cousins of S) came to K's house one night and took S to their own house, which was close by, and S was at once married to one of them. The father of S was not asked for his consent, and it was known by the nephews and by K that the father objected to such a marriage. K was present at the marriage and consented to it, hoping to reconcile the girl's father to it subsequently. The father, however, sought the aid of the police, to whom S was given up by her cousins after having been detained by them in their house for thirty-six hours. The four cousins were then charged, under s. 366 of the Indian Penal Code, with kidnapping S from lawful guardianship with intent that she might be compelled to marry one of them. The charge was framed in general terms and did not state from whose guardianship the kidnapping was alleged to have taken place. The trial was, however, conducted on the footing that the kidnapping was from the guardianship of K. The accused were acquitted, on the ground that K was at the time the lawful guardian of the girl, and it had not been shown that she had been taken without K's consent Upon an appeal being preferred by Government against that acquittal: *Held* that the accused had been rightly acquitted of the charge of kidnapping S from the guardianship of K; but that the question whether they were guilty of kidnapping S from the guardianship of her father had not been and ought to be tried. The word "include" in the explanation to s. 361 of the Indian Penal Code is not intended to limit the protection which the section gives

Kidnapping (*contd.*)—

to parents and minors, but rather to extend that protection by including in the term "lawful guardian" any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the Criminal Law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping even though the actual possession should be temporarily with a friend or other person.—JAGANNADHA RAO *v.* KAMARAJU, I. L. R., 24 Mad. 284.

3. KIDNAPPING—*From lawful guardianship — Mahomedan Law — Mahomedan minor, guardianship of—Preferential right of Mahomedan mother—Penal Code (Act XLV. of 1860) ss. 361, 363.*] Under the Mahomedan law the mother is entitled to the custody of her daugher, in preference to the husband, until the girl attains the age of puberty. The removal of an immature Mahomedan girl of eleven or twelve from the house of her mother-in-law in whose charge the husband had left her, by a third person acting at the instance, and under the instigation of her mother, is not a taking from "lawful guardianship," and does not amount to "kidnapping." *Nur Kadir* v. *Zulekha Bibi*, I. L. R., 11 Cal. 649, referred to.—KORBAN *v.* EMPEROR, I. L. R., 32 Cal. 444.

4. KIDNAPPING—*Abetment.*—One Musammat Chunia, by making certain false representations to the mother of Jiwania, a married girl of eleven years of age, induced her to part with the custody of her daughter. Chunia took the girl away from her own village to a neighbouring village, where she was joined by one Tika. Thence Chunia and Tika took the girl about with them from place to place making unsuccessful attempts to dispose of her in marriage, until they were arrested by the chaukidar of Tiabpur, on his being informed that an attempt had been made to sell the girl in that village. Upon these findings Chunia was convicted of the offence punishable under s. 366 of the Indian Penal Code and Tika of abetment of that offence, following the ruling in *The Queen* v. *Samia Kaundan* (I. L. R., 1 Mad. 173). On appeal to the High Court, that of Chunia was summarily rejected. As to Tika it was *held*, dissenting from *The Queen* v. *Samia Kaundan* and agreeing with the view taken in *Queen-Empress* v. *Ram Sundar* (I. L. R., 19 All. 109) and *Rakhal Nikari* v. *Queen-Empress* (2 C. W. N. 81), that the offence of kidnapping being completed so soon as the minor was actually taken out of the custody of her guardian, Tika could not properly be convicted of abetment on the hypothesis that the offence was a continuing one. But, inasmuch as there was evidence on the record that the assistance given by Tika in attempting to dispose of the girl Jiwania was the result of a conspiracy entered into before the kidnapping took place, the conviction of Tika for abetment of kidnapping was sustained.—EMPEROR *v.* TIKA, I. L. R., 26 All. 197.

L.

Land mark—

LAND-MARK—*Arbitrator—Public servant—Mischief—Land-mark—Penal Code (Act XLV. of 1860), ss. 21, 434.*] The parties to a proceeding under s. 145 of the Criminal Procedure Code by mutual consent referred the dispute as to the possession to the arbitration of A, and the Magistrate thereupon cancelled the proceedings under s. 145. The arbitrator in order to define the boundary erected certain pillars, which were destroyed by the accused and they were in consequence convicted under s. 434 of the Penal Code:—*Held* that the conviction was illegal, as A was not an arbitrator within the definition of s. 21, cl. (*6*) of the Penal Code, nor was he a public servant authorised to fix the pillars within the meaning of s. 434 of that Code.—SUNDAR MAJHI *v.* EMPEROR, I. L. R., 30 Cal. 1084.

Lawful Custody, Escape from—

LAWFUL CUSTODY ESCAPE FROM—The police of an adjoining Native State arrested in British territory one Paran Singh suspected of having committed an offence in the Native State, and made him over to one Debi, a chaukidar, from whose custody he escaped. *Held* that neither the original arrest nor the subsequent custody by the chaukidar were lawful, and therefore that the chaukidar could not properly be convicted under s. 223 of the Indian Penal Code. *Empress of India* v. *Kallu* (I. L. R., 3 All. 60), *Kalai* v. *Kalu Chowkidar* (I. L. R., 27 Cal. 366) and *King-Emperor* v. *Sohri* (I. L. R., 23 All 266) referred to.—*Emperor* v. *Debi*, I. L. R., 29 All. 377.

Lawful Custody, Rescue from—

LAWFUL CUSTODY, RESCUE FROM—A private person lawfully arrested a thief in the act of committing theft, and made him over to a village chaukidar to be taken to the nearest police-station. On the way to the police station, three persons seized the chaukidar, and the thief made his escape. *Held* that the rescuers were rightly convict-

Lawful Custody, Rescue from (*ctd.*)—

ed under s. 225 of the Indian Penal Code The arrest of the thief having been in the first instance lawful, the requirements of s. 39 of the Code of Criminal Procedure were sufficiently complied with by the person arresting sending him to the police-station in the custody of the chaukidar. *Queen Empress* v. *Potadu* (I. L. R., 29 Cal. 33) followed. *King-Emperor* v. *Johri* (I. L. R., 11 Mad. 480) referred to.—*Emperor* v. *Parsiddhan Singh*, I. L. R., 29 All. 575.

Legal Practitioner—

1. LEGAL PRACTITIONER—*Act XVIII. of 1879, s. 14—Prosecution of Mukhtar for misconduct in Civil Court.*] A Sub-Divisional Magistrate has no power to prosecute under s. 14 of Act XVIII. of 1879, Mukhtars authorised to practice in the Civil and Criminal Courts, for misconduct relating to suits before the Civil Court.—RADHA CHURN CHUCKERBUTTY, *In re*, 10 C. W. N. 1059.

2. LEGAL PRACTITIONER—*Act XVIII. of 1879 — Unprofessional Conduct—ss. 13, 14* —A pleader is within his rights in declining to accept a brief if he does not wish to do so, and is not bound to give his reasons for it. A pleader called upon to show cause why he should not be reported to the High Court for unprofessional conduct under ss. 13 and 14 of the Legal Practitioners Act, need not wait to see the result of the application against him, and is entitled to come at once to the High Court for its intervention.—*In re* NABIN CHANDRA DAS GUPTA, A PLEADER, I. L. R., 35 Cal. 317.

Letters Patent—

1. LETTERS PATENT—*Art. 15—'Criminal Trial"—Appeal—Order to furnish security for keeping the peace—"Judgment."*] Petitioner had been ordered by a Head Assistant Magistrate to furnish security for keeping the peace, under s. 107 of the Code of Criminal Procedure. The order was confirmed on appeal. An application to the High Court to revise the order came before a single Judge and was rejected. This appeal was filed against the last-mentioned order :—*Held*, that no appeal lay. *Per* THE OFFG. *C.J.*—The order requiring security was an order in a criminal trial, and, in consequence, the order passed in revision was also an order in a criminal trial. *Per* RUSSELL, *J.*—The order appealed against was not a "judgment" within the meaning of Art. 15.—IN THE MATTER OF RAMASAMY CHETTY, I. L. R., 27 Mad. 510.

2. LETTERS PATENT (CL. 25)—*Reference to Full Bench—Power of Judge sitting at Criminal Sessions of the High Court to refer point to Full Bench—Letters Patent High*

Letters Patent (*contd.*)—

Court, cl. (25)—Point raised before accused called on to plead.] Where a point is raised on behalf of the accused in a trial at the Criminal Sessions of the High Court before he is called upon to plead, the Judge presiding at the Sessions has no power under the Charter to refer the matter to a Full Bench.—QUEEN EMPRESS *v.* DOLEGOBIND DAS, I. L. R., 28 Cal. 211.

3. LETTERS PATENT—*(Act XIV. of 1908) cls. 25 and 26.* See Evidence Act ss. 25, 114 illus. (*b*), I. L. R., 35 Mad. 397.

4. LETTERS PATENT—*(Amended), 1865, cl. 26—Criminal Procedure Code (Act V. of 1898), s. 162—Bombay City Police Act (IV. of 1902), s. 63—Indian Evidence Act (I. of 1872), s. 24 and 167—Statement made by a witness to and taken down in writing by a Police officer—Admissibility in evidence—Confession of accused, admissibility of.*] One P., an entry clerk in the General Post Office, Bombay, was charged with having committed theft in respect of a registered letter. S., a friend of the accused, had made a statement to a Police Officer which the latter had taken down in writing. At the trial S. denied having made the statement whereupon the Presiding Judge admitted the statement in evidence both to discredit S. and also as evidence against P. in that it contained statements made to the Police corroborating confessions made by P. These confessions were also used in evidence against P. On the application by P.'s Counsel the Advocate General certified under Cl 26 of the Amended Letters Patent that the said document was wrongly admitted. On a review of the Full Bench.—*Held*, having regard to section 162 of the Criminal Procedure Code (Act V. of 1898), the said document ought not to have been admitted or used in evidence against the accused. The question was also raised by Counsel for the Crown whether under Cl. 26 of the Letters Patent the Court had power to review the case only *qua* the wrongly admitted evidence or had power to review all the rest of the case. *Held*, by RUSSELL, AG. *C. J.*, CHANDAVARKAR and BATTY, *JJ.* (DAVAR and BEAMAN, *JJ.* dissenting) that the Court has power to review the whole case. *Per* DAVAR, *J.* :—Under clause 23 the Court is at liberty to review the case or part of the case for the purpose of determining the point or points of law which are either reserved for its opinion or certified by the Advocate General to be wrongly decided. It is not open to the Court in review to go behind the record of the case and enter into an elaborate investigation as to whether each particular piece of evidence recorded by

Letters Patent (*contd.*)—

the Judge was or was not rightly admitted. *Per* BEAMAN, *J.*:—If the party did not object, did not ask for a certificate in respect of evidence which is challenged for the first time after the trial at the hearing before the Court of Reference, the objection comes too late.—EMPEROR *v.* NARAYAN RAGHUNATH PATKI, I. L. R., 32 Bom. 111.

Levy of Tax—

LEVY OF TAX—*District Municipalities Act (IV. of 1884), s. 63 (2), (3)—Legality.*] By s. 63 (*2*) of the District Municipalities Act (Madras), 1884, it is enacted that, except as provided in sub-s. *(3)* of that section and in s. 63-A, a tax may be levied at such rate, not exceeding eight and a half per centum, on the annual value of the buildings or lands or both upon which it is imposed, as the Municipal Council may have notified under s. 50; and by s. 63 *(3)*, in the case of (*a*) lands not occupied by buildings and not appurtenant to any building or attached thereto for use therewith as a garden or pleasure-ground or for the pasturage of animals kept for private use, and (*b*) lands occupied by native huts, the Chairman may, subject to the approval of the Municipal Council and the sanction of the Governor in Council, impose a tax on such lands at an annual rate, not exceeding four annas for every 80 square yards thereof, in lieu of the tax referred to in sub-s. (*2*): Provided that no tax shall be levied under this sub-section upon lands used solely for agricultural purposes. *Held* that, subject to the conditions mentioned, a tax levied under sub-s (*3*) on all lands within a municipality is a legal tax.—QUEEN-EMPRESS *v.* ALLAN, I. L. R., 24 Mad 195.

Libel—

LIBEL—*Privileged Occasion—Malice, test of—Express Malice—Bonâ fide statement.*] In an action to recover damages for libel if it is proved that what the defendant wrote was written *bonâ fide* in answer to the attack made on him by the plaintiff and for the sole purpose of defending himself from such an attack, then the occasion is privileged. *O'Donoghue* v. *Hussey*, Ir. R. 5 C. L. 124, referred to. But if the statements made are false to the knowledge of the defendant, or if a portion of the statements is irrelevant and unconnected with the matter in dispute, then the privilege of the occasion is destroyed, or rather, there would then be evidence of express malice to destroy the privilege. *Clark* v. *Molyneux*, 3 Q. B. D. 237, and *Picton* v *Jackman* 4 C. and P. 257, referred to. The proper test in enquiring whether the nature of the words by themselves afford evidence of malice, is to take the

Libel (*contd.*)—

facts as they appeared to the defendant's mind at the time of publication and to ask whether the words used are such as the defendant might have honestly and *bonâ fide*, under the circumstances, employed; and the particular expressions used ought not to be too closely scrutinised, provided the intention of the defendant was good and he acted *bonâ fide*. *Spill* v. *Maule*, L. R. 4 Exch. 232, *Woodward* v. *Lander*, 6 C. and P. 548, and *Laughton* v. *Bishop of Sodor and Man*, L. R. 4 P. C. 495, referred to.—AMRIT NATH MITTER *v.* ABHOY CHARAN GHOSH, I. L. R., 32 Cal. 318.

Local Inquiry—

LOCAL INQUIRY—*Criminal Procedure Code, s. 145—Dispute as to immoveable property—Revision.*] In a proceeding under s. 145 of the Criminal Procedure Code, the Magistrate held a local inquiry and passed his orders on the basis of the result of that local inquiry, discarding the evidence, which was previously put before him, as unreliable. *Held* that the Magistrate was wrong in his procedure, and that his order should be set aside.—LAL BEHARY SHA *v.* BRJOY KUMAR SIKDAR, 10 C. W. N. 181.

Local Inspection—

1. LOCAL INSPECTION—*Power of Magistrate to make such inspection during a trial to understand the evidence and to determine the credibility of witnesses—Importing into judgment facts observed on such inspection—Disqualification of Magistrate—Illegality of conviction—Criminal Procedure Code (Act V. of 1898) ss. 148, 202, 293, 294, 556, Explanation.*] A Magistrate may inspect the place of the occurrence of an offence in cases where he cannot follow or understand the evidence without seeing the features of the land, and he does not, merely by doing so, disqualify himself from trying the case. But every possible precaution should be taken that the inspection is only a view of the local features, and an immediate report of what he has seen should be placed on the record and laid open to the scrutiny of the parties. The Magistrate can use the testimony of his own senses to test the veracity of the witnesses before him as regards the features of the locality, but he cannot import into the case other matters of facts which he has himself observed. Where the Magistrate did not merely view the place of occurrence for the purpose of following or understanding the evidence and testing it in respect of the features of the locality, but imported into his judgment matters of opinion and inference based on

Local Inspection (*contd.*)—

circumstances not on the record, and did not place thereon the results of his local inspection :—*Held*, that he had committed an error of jurisdiction which may have materially prejudiced the accused, and that the conviction was, therefore, bad in law. The Explanation to s. 556 of the Criminal Procedure Code does not directly authorize a Magistrate to make a local inspection, but saves his jurisdiction to try a case, notwithstanding his having made such inspection or investigation, and does not do away with the restrictions under which they should be made. *Grish Chunder Ghose* v. *Queen-Empress*, I. L. R. 20 Cal. 857; *Hari Kishore Mitra* v. *Abdul Baki Miah* I. L. R. 21 Cal. 920; *Queen-Empress* v. *Manikam*, I. L. R. 19 Mad. 263; *In re Lalji*, I. L. R., 19 All. 302; *Satri Dulali* v. *Empress*, 3 C. W. N. 607; *Nidani Mondal* v. *Alaboxi Sirkar*, 9 C. W. N. ccxxii and *Lal Behari Saha* v. *Bejoy Sankar Sikdar*, 10 C. W. N. 181, referred to.—BABBON SHEIK *v.* EMPEROR, I. L. R. 37 Cal. 340.

2. LOCAL INSPECTION—*Results of inspection not recorded at the time but embodied in the trying Magistrate's judgment—Effect of omission of contemporaneous record—Facts so found not impugned before the Appellate Court—Legality of the conviction—Prejudice.*] A Magistrate trying a case may view the place of occurrence in order to follow or understand the evidence, but he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other. *In re Lalji*, I. L. R., 19 All. 302, approved of. There is nothing in the Criminal Procedure Code to prevent a Magistrate from holding a local investigation for the purpose of elucidating any matter in dispute, and in so far as it conforms to the provisions of the law of evidence it cannot be excluded. He should place on record the results of the local investigation, but it is not a positive rule of law that a note thereof must be made on the spot. Where the facts established by the local investigation are impugned, and there is no contemporaneous record of them, the Appellate Court cannot act on them; but if they are not impugned, the Court cannot exclude them from consideration, because there is no such record, when the accused in not prejudiced by the irregularity. *Joy Coomar* v. *Bundhoo Lall*, I. L. R., 9 Cal. 353, followed. *Babbon Sheikh* v. *Emperor*, I. L. R. 37 Cal 340, *Girish Chunder Ghose* v. *Queen-Empress*. I. L. R. 20 Cal. 857, distinguished. Where the defence suggested that the alleged place of occurrence, a mound of earth, was not scaleable, nor large enough to accommodate the number

Local Inspection (*contd.*)—

of assailants said to have been present, upon which the trying Magistrate inspected the locality and found the facts against the accused, but made no separate note thereof on the record at the time, though he embodied them in his judgment, and they were not impugned before the Appellate Court, but it was sought to exclude them on the ground of the omission of such note: *Held*, that the omission of the Magistrate to record a note of the results of the local inspection at the time had not prejudiced the accused, and that the conviction was not bad on that ground.—ATIAR RAI *v.* EMPEROR, I. L. R. 39 Cal 476.

M.

Magistrate—

1. MAGISTRATE—*Jurisdiction — Cognizance of an offence under the Penal Code—Incompetence to take cognizance, on the same facts, of an offence under a special Act, for want of consent of Government—Subsequent complaint to a superior Magistrate of an offence under the Special Act, with the necessary consent obtained from Government—Jurisdiction of latter to take cognizance without withdrawal of the case to his own file—Search for explosives in the presence of police officers of superior rank—Legality of search—Opinion of Assessors, how to be recorded—Preparation to commit dacoity—Admissibility of documents found in possession of the accused—Criminal Procedure Code (Act V. of 1898), ss. 190, 309, 529 (e), 530 (k), and 531—Penal Code (Act XLV. of 1860), s. 399—Explosive Substances Act (VI. of 1908), ss. 4 (b) and 7—Indian Explosives Act (IV. of 1884), Rule 32 (1) (b) of Government Rules.*] Where a complaint was filed by a Sub-Inspector of Police before the Subdivisional Magistrate, of an offence under s. 399 of the Penal Code, and the facts disclosed also an offence under s. 4 (*b*) of the Explosive Substances Act (VI. of 1908), of which the Magistrate could not then take cognizance for want of the consent of Government under s. 7 of the Act, and a complaint was subsequently filed by the Superintendent of Police, with such consent obtained, before the Additional District Magistrate: *Held*, that the latter had jurisdiction to take cognizance of the offence, and that the initiation and continuation of the proceedings by him were legal, notwithstanding that he had not withdrawn the original case to his own file. *Jhumuck Jha* v. *Pathuk Mandal*, I. L. R., 27 Cal. 798, *Golapdy Sheikh* v. *Queen-Empress*, I. L. R., 27 Cal. 979, [followed in *Radhabullav Ray* v. *Benode Behari Chatterjee*, I. L. R., 30 Cal. 449.]

Magistrate (*contd.*)—

Emperor v. *Sourindra Mohan Chuckerbutty*, I. L. R., 37 Cal. 412, *Moul Singh* v. *Mahabir Singh*, 4 C W. N. 242, *Charu Chandra Das* v. *Narendra Krishna Chakravarti*, 4 C. W. N. 367, *Bishen Doyal Rai* v. *Chedi Khan*, 4 C W. N. 560, and *Jharu Jola* v. *Shukh Deo Singh*, 3 C. L. J. 87, distinguished. *Held*, also, that in any case, having regard to s. 529(*e*), 530(*k*), and 531 of the Criminal Procedure Code, unless it appeared that the proceedings wrongly held had, in fact, occasioned a failure of justice, they could not be set aside. *Sonatun Dass* v *Gooroo Churn Dewan* 21 W. R Cr. 88, referred to. A search for explosives by police officers of rank, not below that of an Inspector, is legal under rule 32 (*1*) (*b*) of the Government Rules framed under the Indian Explosives Act (IV. of 1884). S. 309 (*1*) of the Criminal Procedure Code requires the opinions of the Assessors to be stated orally, and not in writing or in the form of a judgment under s. 367. Under s. 399 of the Penal Code, having in possession or immediate control any explosive substance is one of several means to the end, whereas, under s 4 (*b*) of the Explosive Substances Act, it is the offence itself, provided the necessary intent is proved. In order to render documents found in the possession of a party admissible against him as proof of their contents, it is necessary to show that he has in some way identified himself or, in other words, has, by any act, speech or writing, manifested an acquaintance with, and knowledge of, the contents of all or any of them. The rule would apply more strongly where some of the papers and letters were received, and others written, by the party against whom they are sought to be used. *Wright* v. *Tatham*, 5 Cl. & Fin. 670, and *Barindra Kumar Ghose* v. *Emperor*, I L R., 37 Cal 467 followed.—LALIT CHANDRA CHANDA CHOWDHURY *v.* EMPEROR, I. L. R., 39 Cal. 119.

2. MAGISTRATE—*Jurisdiction — Deputy Magistrate in charge of the office of the District Magistrate at head-quarters — Subordination of the Sub-divisional Magistrate to such Deputy Magistrate—Power of latter after taking cognizance and examining the complainant on oath to direct a local investigation by the former—Irregularity, effect of—Power of the same to dismiss the complaint, and order the prosecution of the complainant, on evidence taken at the investigation and on the report of the Sub-divisional Officer—Criminal Procedure Code (Act V. of 1898), ss. 12, 202, 203, 476 and 529(f).*] A Sub-divisional Magistrate is not, under s. 202 of

Magistrate (*contd.*)—

the Criminal Procedure Code, subordinate to a Deputy Magistrate, appointed to act in the district, without definition of the local limits of his jurisdiction, who was in charge of the office of the District Magistrate at head-quarters during the latter's absence on tour, and such Deputy Magistrate cannot, therefore, after taking cognizance of an offence committed in the subdivision, and examining the complainant on oath, direct a local investigation by the Sub divisional Magistrate, nor can he thereafter dismiss the complaint, and order the prosecution of the complainant under s. 476 of the Code on such report, and the evidence taken at the investigation. S. 529 (*f*) does not, in the circumstances, confer jurisdiction on the Deputy Magistrate to make such orders of dismissal and prosecution, but vests the Sub-divisional Magistrate with seisin of the case, and the latter alone can inquire into it, and pass final orders.—BHIKU HOSSEIN *v.* EMPEROR, I. L. R., 39 Cal. 1041.

3. MAGISTRATE—*Jurisdiction—Criminal Procedure Code (Act V. of 1898,) ss. 100, 552—Jurisdiction of first class Magistrate, upon an application under s. 552 of the Code, to issue a search warrant under s. 100 on a fresh complaint of facts alleging wrongful confinement—Warrant under s. 100 drawn up on a printed form used under s. 98, with the necessary alterations—Presumption that such alterations were made—Destruction of original warrant by the accused—Resistance to execution of such warrant and assault on the police—Penal Code (Act XLV. of 1860), ss. 147 and 332.*] Where, on an application made under s. 552 of the Criminal Procedure Code, to a Magistrate of the first class, he examined the applicant on oath, recorded a statement of facts alleging wrongful detention of his wife, and directed the issue of a search-warrant under s. 100: *Held*, that he had jurisdiction to do so. A search-warrant under s. 100 of the Code, drawn up, in the absence of a printed form of warrant thereunder, on a printed form used under s. 98, with the necessary alterations, is not illegal. *Bisu Haldar* v. *Probhat Chunder Chuckerbutty*, 6 C. L. J. 127, distinguished. Where the original warrant was in such a case not produced at the trial owing to its destruction by the accused at the time of its execution: *Held*, that it must be taken that it contained the substance of s. 100, and that the necessary alterations were made.—GORA MIAN *v.* ABDUL MAJID, I L. R., 39 Cal. 403.

4. MAGISTRATE — *Jurisdiction — Tenant —Sub-tenant—Omission to state material facts in the order—Criminal Procedure Code*

Magistrate (*contd.*)—

(*Act V. of 1898*) *s. 144.*] Before a Magistrate can take action under s. 144 of the Criminal Procedure Code he must be of opinion that immediate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in the order: Where therefore, a Magistrate passed an order directing the second party not to interfere with the first party in the cultivation of his *khas* lands or the collection of rents from his under-tenants, and it did not appear from the proceedings that he was of opinion that immediate prevention or speedy remedy was necessary and the order made did not state the material facts of the case. *Held* that the order was bad and must be set aside.—KAROOLAL SAJAWAL *v* SHYAM LAL, I. L. R., 32 Cal. 935.

Magistrate, Power of—

1. MAGISTRATE, POWER OF—*Order to Police to take possession of account books the subject of an offence, without summons to produce or search warrant issued—Legality of order—Reference of case after local investigation to a Magistrate for inquiry and Report—Irregularity — Quashing pending proceedings—Criminal Procedure Code (Act V. of 1898) ss 94. 96. 192, 202—Valuable security—Title page of account book containing names and shares of the partners signed by them—Penal Code (Act XLV. of 1860) s. 30*] A Magistrate may, on taking cognizance of a complaint, issue either a summons under s. 94 or a search warrant under s. 96 of the Criminal Procedure Code, but is not competent to pass an order directing the police to take possession of account books forming the subject of the charge. If the Magistrate, after first having examined the complainant under s. 200, is not satisfied that process should issue, he can, under s. 202, either hold an inquiry and take evidence himself, or direct a "local investigation" by a subordinate officer. After ordering a police investigation, he may, if dissatisfied with the materials, personally make a further inquiry and take evidence, or direct a further "local investigation," but not an inquiry and report by another Magistrate. If he thinks it proper to send the case to a Magistrate for inquiry, other than a "local investigation," he should transfer it under s. 192 to the latter for disposal, and not for a report. Where the complainant made no specific allegations of facts in the complaint, but stated in his examination on investigation under s. 202 that when the *jubda* books were first opened, the title pages contained the name of his son as a partner, and that he later discovered that a substitution of pages had been made showing the name of his father-in-law as a partner, and the statements in the complaint and such examination were not consistent as to the names originally entered, and he was contradicted by his only witness in several particulars, and his story was not supported by the original deed of partnership or the payment of the contributions, it was *held* that the proceedings must be quashed as the materials before the Magistrate disclosed no offence. *Jagat Chandra Mazumdar* v. *Queen-Empress*, I. L. R., 26 Cal. 786, *Choa Lal Das* v. *Anant Pershad Misser*, I. L. R., 25 Cal. 233 and *Chandi Pershad* v. *Abdur Rahaman*, I. L. R., 22 Cal. 131, referred to. *Semble*: A title page in an account book containing the names of the partners and the amount of the capital contributed by each is, if signed by them, a "valuable security" within s. 30 of the Penal Code—HARI CHARAN GORAIT *v.* GIRISH CHANDRA SADHUKHAN, I. L. R., 38 Cal. 68.

2. MAGISTRATE, POWER OF—*District Magistrate, power of, to cancel bond for keeping the peace or for good behaviour—Order directing prosecution for using forged rent-receipts in a proceeding before a subordinate Magistrate, for keeping the peace, and for abetment thereof—"Judicial proceeding"—Criminal Procedure Code (Act V. of 1898) ss. 4 (m), 125, 476.*] S. 125 of the Criminal Procedure Code gives the District Magistrate the power to cancel a bond for keeping the peace for reasons which appear to him sufficient, but not the right to hear an appeal from an order in a proceeding under s. 107 passed by a subordinate Magistrate. A District Magistrate has no jurisdiction under s. 476 of the Code to direct a prosecution for dishonestly using a forged document and for abetment in respect of rent-receipts filed before a subordinate Magistrate in a case under s. 107 of the Code, which has been disposed of by him under s. 125, the proceeding under which is not a "judicial proceeding."—DAYANATH THAKUR *v.* EMPEROR, I. L. R., 37 Cal. 72.

Magistrate, subordination of—

MAGISTRATES, SUBORDINATION OF—*Transfer—Additional District Magistrate and District Magistrate—Omission to state grounds—Criminal Procedure Code (Act V. of 1898) ss. 10 (2), 12, 528.*] S. 12 of the Criminal Procedure Code does not make an Additional District Magistrate subordinate to the District Magistrate, and the latter cannot exercise the powers under s. 528 in respect of such Magistrates. The Code does not define the relation between a District Magistrate and an Additional District Magistrate. It is incumbent on

Magistrate, subordination of (*contd.*)

the Court making a transfer under s. 528 to record its reasons therefor, but the omission to do so is not a ground for setting aside the order where it has not prejudiced the accused.—PRAKAS CHUNDER DUTT *v* EMPEROR, I. L. R., 34 Cal. 918.

Magistrate, Transfer of—

MAGISTRATE, TRANSFER OF — *Inquiry—Continuance of inquiry by another Magistrate without the examination of the witnesses de novo—Criminal Procedure Code (Act V. of 1898) ss. 145, 350.*] S. 350 of the Criminal Procedure Code applies to an inquiry under s. 145. Where a Magistrate, who has commenced such an inquiry, is transferred, and the District Magistrate has made over the case to another Magistrate, the latter has power, under s. 350 of the Code, to proceed with it without examining th witnesses *de novo*.—ANU SHEIKH *v.* EMPEROR, I. L. R., 37 Cal. 812.

Mahomedan Law—

MAHOMEDAN LAW—*Bigamy—Effect of apostacy of husband after marriage, and reconversion to Islam during the period of iddut—Second marriage of the wife with another man during such period—Abetment—Penal Code (Act XLV. of 1860), ss. 494 and* $\frac{494}{109}$.] Under the Mahomedan law the marriage of a man, who subsequently embraces Christianity, becomes *ipso facto* void, notwithstanding his reconversion to Islam during the period of *iddut*; and the wife, in contracting a second marriage during such period, does not commit bigamy under s. 494 of the Penal Code. *Per* HOLMWOOD, *J.*—A second marriage contracted by the wife during the period of her *iddut* is not void by reason of its taking place during the life of the first husband, but by reason of a special doctrine of the Mahomedan law with which the Penal Code has nothing to do. Where the parties have acted in good faith or what they believe to be a sound interpretation of a very difficult point of Mahomedan law, even though they are mistaken, the consequences cannot be visited upon them in a Criminal Court in a trial for bigamy.—ABDUL GHANI *v.* AZIZUL HUQ, I. L. R., 39 Cal. 409.

Maintenance—

1. MAINTENANCE — *Criminal Procedure Code, ss. 488, 489, 490—Agreement between the parties subsequent to the order for maintenance—Such agreement no bar to enforcement of order for maintenance so long as such order subsists.*] Where an order for maintenance is passed under s. 488 of the Code of Criminal Procedure and the parties afterwards come to an agreement between themselves as to what is to be paid, the existence of such agreement will not of

Maintenance (*contd.*)—

itself be a bar to the enforcement of the order for maintenance; but it will be the duty of the party chargeable, if he wishes to be relieved from the payment of the maintenance allowance, to bring such settlement to the notice of the Court and obtain a cancellation of the order for maintenance. *Rangamma* v. *Muhammad Ali*, (I. L. R., 10 Mad. 13), not followed.—PRABHU LAL *v.* RAMI, I. L. R., 25 All. 165.

2. MAINTENANCE — *Criminal Procedure Code, s. 488—Application for cancelment of order for maintenance — Jurisdiction.*] Where it is sought under s. 488, sub-ss. (4) and (5) of the Code of Criminal Procedure, to have an order passed under sub s. (1) of s. 488 set aside, such application must be made to the Magistrate who passed the original order or to his successor in office, who, and who only, has jurisdiction in the matter.—BHAGWANIA *v.* SHEO CHARAN LAL, I. L. R., 25 All. 545.

3. MAINTENANCE — *Criminal Procedure Code, s. 488.*] After an order for maintenance under s. 488 of the Criminal Procedure Code was passed in favour of a wife, the husband sued the wife and obtained against her a decree for restitution of conjugal rights. The wife accordingly returned to her husband, but, as the latter did not comply with the conditions of the decree, left him and applied for enforcement of the order of maintenance. *Held*, that the wife is entitled to have the order enforced.—DEVI DITTA *v.* GANGA DEVI, 4 P. R. 1906, Cr.

Malicious Prosecution—

1. MALICIOUS PROSECUTION—*Action on the case—Cause of action—Complaint laid, but no process issued—Criminal Procedure Code (Act V. of 1898) ss. 202, 203—Defamation—Privilege.*] Where a complaint had been laid before a Magistrate by the defendant against the plaintiff for criminal breach of trust, and the Magistrate had referred the matter to the Police under s. 202 of the Criminal Procedure Code, for enquiry and report and finally dismissed the complaint under s. 203 of the Criminal Procedure Code, without issuing process:—*Held*, that the prosecution had not commenced, and no suit for malicious prosecution was maintainable. *Yates* v *The Queen*, L. R. 14 Q. B. D. 648, and *Clarke* v *Postan*, 6 C. & P. 423, referred to. Nor would there lie any action on the case analogous to malicious prosecution. *Held* further, that the complaint, even if defamatory, was absolutely privileged.—GOLAP JAN *v.* BHOLANATH KHETTRY, I. L. R., 38 Cal. 880.

2. MALICIOUS PROSECUTION — *Information given to police—Prosecution by police*

Malicious Prosecution (*contd.*)—

after investigation—Acquittal of accused—Liability of informant where information is found to be false—"Prosecutor" in criminal case — Malice — Criminal Procedure Code, s. 495.] It is not a principle of universal application that if the police or Magistracy act on information given by a private individual without a formal complaint or application for process the Crown and not the individual becomes the prosecutor. *Narasinga Row* v. *Muthaya Pillai*, I L. R., 26 Mad. 362, distinguished. The answer to the question who is the "prosecutor" must depend upon the whole circumstances of the case. The mere setting the law in motion is not the criterion; the conduct of the complainant before and after making the charge must also be taken into consideration Nor is it enough to say the prosecution was instituted and conducted by the police; that is again a question of fact. Theoretically all prosecutions are conducted in the name and in behalf of the Crown, but in practice this duty is often left in the hands of the person immediately aggrieved by the offence, who, *pro hac ice*, represents the Crown. In India under s. 495 of the Criminal Procedure Code (Act V of 1898) a private person may be allowed to conduct a prosecution, and "any person conducting it may do so personally or by pleader"; and where it is permitted this is obviously an element to be taken into consideration in judging who is the prosecutor and what are his means of information and motives. The foundation of the action for malicious prosecution is malice, which may be shown at any time in the course of the inquiry *Fitzjohn* v *Mackinder*, 9 C. B. N S 505. referred to. Where the defendants though their names did not appear on the face of the proceedings except as witnesses, were directly responsible for a charge of rioting being made against the plaintiff, had produced false witnesses to support the charge at the investigation by the police; had taken the principal part in the conduct of the case before the police and in the Magistrate's Court; had instructed the Counsel who appeared for the prosecution at the trial that the plaintiff "had joined the riot," and had done all they could to procure the conviction of the plaintiff, who was acquitted being found not to have been present at the rioting. *Held* that they were rightly found liable for damages in an action for malicious prosecution.—GAYA PRASAD *v.* BHAGAT SINGH, I. L. R., 30 All. 525.

Management of Temple—

MANAGEMENT OF TEMPLE—*Criminal Procedure Code (Act V. of 1898), s. 144—Order to abstain from interfering with the management of a temple until the eviction of another person—Legality of order.*] An order passed under s. 144 of the Code of Criminal Procedure directed a person (1) not to interfere with the management of a certain temple; (2) until another person should be duly evicted from the management by due course of law. *Held* that the first portion of the order was a direction to "abstain from a certain act" within the meaning of those words as used in s. 144 of the Code of Criminal Procedure; but that the latter portion contravened the provisions of sub-s. (5) of that section and that to that extent the order was made without jurisdiction.—RAMANADHAN CHETTI *v.* MURUGAPPA CHETTI, I. L. R., 24 Mad. 45.

Master and Servant—

1 MASTER AND SERVANT—*Ganja—Illegal possession of ganja by servant acting on his own behalf and beyond the scope of his employment—Liability of the master for the act of the servant—Bengal Excise Act (Beng. V. of 1909), ss 46 a) and 56.*] To support a conviction under s 56 of the Bengal Excise Act, it is necessary to show not only that a servant was in the employ of the master but also that he was acting within the scope of his employment and for the benefit of the latter. Where a servant, whose duty was to remain at his master's shop and to conduct the business there, was found travelling to another place with *ganja* in his possession, in contravention of s 46(*a*) of the Act: *Held*, that the master could not be convicted under s. 56, as his servant acted beyond the scope of his employment and for his own private purpose. *Suffer Ali Khan* v. *Golam Hyder Khan*, 6 W. R. Cr. 60, referred to *Emperor* v *Haji Shaik Mahomed Shustari*, I. L. R., 32 Bom. 10, distinguished.—UTTAM CHAND *v.* EMPEROR, I. L. R., 39 Cal. 344.

2 MASTER AND SERVANT—*Agreement with Native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants—Liability of master for criminal acts done by servant on the master's behalf—master liable for agreements entered into on his behalf by his servant in violation of section 111—Indian Emigration Act (XXI. of 1883, amended by Act X. of 1902), secs. 6, 107, 111.*] Where penal statute has been infringed by servants and criminal proceedings are taken against the master, although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed, not merely with re-

Master and Servant (*contd.*)—

ference to its language, but also its subject-matter and object.—EMPEROR *v.* JERVANJI, 31 Bom. 611.

Merchandise Marks Act—

MERCHANDISE MARKS ACT, (ACT IV. OF 1889)— *Books are goods within the meaning of the Act—Penal Code, s. 482—Ingredients of offence under*] Books are 'goods' within the meaning of the Merchandise Marks Act of 1889. *Kanai Das Bairagi* v. *Radha Shyam Basack*, (I. L. R. 26 Cal. 232), followed Where a spurious publication by *K* of a book by *A* is identical with the genuine publication of *A*, the description in the title page of the former that it is the book of *A*, is not, if it is a trade description, untrue in a *material respect* as regards the goods to which it is applied. To constitute an offence under section 482 of the Indian Penal Code, it must be shown that the goods were marked in a manner, reasonably calculated to cause it to be believed that they were the manufacture or merchandise of, or that they belonged to a person whose manufacture or merchandise they were not or to whom they did not belong. If this is shown it will be on the accused to show that it was not done to defraud any one.—RAGHAVALUNAIDU *v.* SUNDRAMURTHI, MUDALI, I. L. R. 31 Mad., 512.

Minor—

1. MINOR—*Penal Code (Act XLV. of 1860), s. 373—Obtaining a girl under the age of 16 for purposes of prostitution—Evidence of intent.*] In a charge against a dancing girl under s. 373 of the Penal Code, for having purchased a young girl with intent that she would be used for the purpose of prostitution, or knowing it to be likely that she would be so used, evidence was given of the fact of purchase for a consideration, and that numerous other dancing girls residing in the neighbourhood were in the habit of obtaining girls and bringing them up as dancing girls or prostitutes, and that there were no instances of girls brought up by dancing girls ever having been married. On its being contended that there was no evidence of intent to support a conviction under s. 373 of the Penal Code, *held* that there was evidence before the Court to support the conviction.—QUEEN-EMPRESS *v.* PAPA SANI, I. L. R., 23 Mad. 159.

2. MINOR—*Criminal Procedure Code (V. of 1898), s. 188—Penal Code (Act XLV of 1860), ss. 108A, 372—Disposing of a minor for immoral purposes—Abetment—Offence committed out of British India—Jurisdiction—Offence not triable except with the crtificate of Political Agent or sanction of Geovernment.*] A minor girl under the age

Minor (*contd.*)—

of sixteen years was taken by accused No. 1, under the direction of accused No. 2, from Sholapur to Tuljapur (in the Nizam's territory), and there dedicated to the goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution. The District Magistrate of Sholapur convicted accused No. 1 of an offence under s. 372, and accused No. 2 of abetment of the offence under ss. 372 and 108A of the Penal Code, and sentenced them each to six months' rigorous imprisonment. *Held* that, as the offence of the disposal of the minor took place out of British India, the Magistrate had no jurisdiction to try the offence, in the absence of a certificate of the Political Agent, or the sanction of the Local Government as required by s. 188 of the Criminal Procedure Code (Act V. of 1898.) *Held*, also, that accused No. 2 was not guilty of abetment, and s. 108A of the Penal Code had no application to the present case. Mere intention, not followed by any act, cannot constitute any offence, and an indirect preparation which does not amount to an act which amounts to a commencement of the offence, does not constitute either a principal offence or an attempt or abetment of the same. The intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their removal with the girl to Tuljapur did not by itself constitute an abetment.—QUEEN-EMPRESS *v.* BAKU, I. L. R., 24 Bom. 287.

3. MINOR—*Determination of custody of—Contract of apprenticeship by minor, how far enforceable—Injunction against minor for breach of such contract—When Court will take minors from custody of parents or persons selected by them.*] A minor may bind himself by a contract of apprenticeship if it be for his benefit; but such a contract cannot be specifically enforced against him either directly or by restraining him from taking service under others or by restraining others from employing him. *DeFrancesco* v. *Barnum*, [43 Ch. D., 165], referred to. If the contract is for the benefit of the minor apprentice an action will lie for enticing away such apprentice and to recover his earnings. Parents and guardians cannot divest themselves of their right of guardianship by any contract. A delegation of such right is revocable at any time and the parent or guardian is bound to revoke it if it is used to the detriment of the children; and it is open to the Court within whose jurisdiction the children are found to exercise the same power, if cause is shown for such interference. The jurisdiction of the Courts to take away children from parents or from persons selected by them is a parental one and the Courts must do what a wise parent

Minor (*contd.*)—

under the circumstances would or ought to do. *The Queen* v. *Gyngull*, [2 Q. B. D., 232 at p. 248], referred to. The main consideration to be acted upon is the benefit or welfare of the child; the welfare of the child means not only its physical but also its moral and religious welfare. A male child above the age of 14 and a female child above the age of 16 years will not ordinarily be compelled to remain in custody to which he or she objects; and in the case of younger children who are still old enough to form an intelligent preference, their wishes will form one of the elements for consideration. The Court will remove children from the custody of one from whom cruelty or corruption is apprehended —POLLARD *v.* ROUSE, 33 Mad. 288.

Mischief—

1. MISCHIEF—*Penal Code* (*Act XLV. of 1860*), *ss. 298, 426, 504—Wilful pollution of food served at a caste-dinner.*] Certain Hindus present at a caste-dinner had sat down to partake of the food which had been served to them, when certain other members of the caste came, and, telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground that their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit to be eaten. On reference by the Sessions Judge, it was held that this conviction was wrong; neither could the accused be convicted under s. 298 or under s. 504 of the Indian Penal Code on the facts found.—KING-EMPEROR *v.* MOTI LAL, I. L. R., 24 All. 155.

2. MISCHIEF—Certain cattle belonging to one M. H., upon various occasions when in charge of a servant of M. H., strayed or were driven into the Government Gardens at Saharanpur, and there caused damage. *Held* that M. H. could not on these facts be convicted of the offence of mischief. *Forbes* v. *Grish Chunder Bhattacharjee* (14 W. R. 31) and *Empress* v. *Bai Baya* (I. L. R., 7 Bom. 126) followed.—EMPEROR *v.* MEHDI HASAN, I. L. R., 29 All. 565.

3. MISCHIEF—*Penal Code, s. 426—Draining off water from a river to the detriment of the fishing rights therein.*] D, as lessee of Government, held rights of fishery in a particular stretch of river. C, by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature. *Held* that when C deliberately changed the course and condition of the river in the manner described, to the detriment of D, he was guilty of the offence of mischief mentioned in s. 426 of the Penal Code. *Bhagiram Dome* v. *Abar Dome*, (I. L. R., 15 Cal. 388) distinguished.—EMPEROR *v.* CHANDA, I. L. R., 28 All. 204.

Misdirection to Jury—

MISDIRECTION TO JURY — *Confession—Evidence Act, ss 27 and 30—Confession of an accused person, which is not the immediate cause of the discovery of stolen property in the house of another accused cannot, under s. 30 of the Evidence Act, be considered as against such other accused—Statement made by a witness to a Police Inspector or to an investigating Magistrate who is not the Committing Magistrate, though in the presence of the accused, not admissible as evidence.*] Under sections 27 and 30 of the Evidence Act, a confession made by one accused can be taken into consideration against another accused when such confession is the immediate cause of the discovery of some fact relevant as against such other accused; and a direction to the jury to take such confession into consideration, when it is not the immediate cause of any such discovery, is a misdirection. It is also a misdirection to ask the jury to take into consideration against the accused a statement made by a witness before a Police Inspector or before a Magistrate, who, though an investigating Magistrate, is not the Committing Magistrate, when such statement is withdrawn before the Committing Magistrate and before the Court of Session.—SANKAPPA RAI *v.* EMPEROR, I. L. R., 31 Mad., 127.

Misjoinder—

MISJOINDER — *Commission of criminal breach of trust in the same transaction as abetment of cheating and attempt to cheat and as part of a common design—Joint trial of one accused under ss. 408 and* $\frac{420}{109}$ *with another under ss.* $\frac{420}{511}$ *of the Penal Code—Legality of separate sentences—Concurrent sentences—Criminal Procedure Code (Act V. of 1898) s. 239.*] Where A, a railway ticket collector, made over two used tickets, which he had collected from passengers, to B, and instructed him to apply for a refund of the fares covered by the same, as unused tickets, at the place of issue, and the latter proceeded there and made such an application but was discovered in the act:—*Held*, that the joint trial of A on charges under ss. 408 and $\frac{420}{109}$ and of B, under ss. $\frac{420}{511}$ of the Penal Code, was legal under the provisions of s. 239 of the Criminal

Misjoinder (*contd.*)—

Procedure Code. *Parmeshwar Lal v. Emperor*, 13 C. W. N 1089, distinguished. *Subrahmania Ayyar* v *King-Emperor*, I L. R. 25 Mad 61, referred to. *Held*, also, that A had committed two distinct offences in the same transaction and that separate sentences were not illegal, though concurrent sentences were, under the circumstances, more appropriate. *Re Noujan*, 7 Mad. H C. R. 375. referred to. The two parts of section 239 of the Criminal Procedure are not mutually exclusive: so that if A induces B to cheat, and B attempts to do so, they may be tried together for abetment of, and attempt at, cheating respectively; and if in the course of the same transaction A commits the separate offence of criminal breach of trust, in furtherance of the conspiracy to cheat, he may be separately charged for such offence at the same trial.—KALI DAS CHUCKERBUTTY *v.* EMPEROR, I. L. R., 38 Cal. 453.

Misjoinder of Charges—

MISJOINDER OF CHARGES — *Distinct offences on different dates during same trial —Presidency Magistrates—Refusal to take oath or answer questions—Criminal Procedure Code (Act V of 1898) ss. 233, 234, 235, 482—Penal Code (Act XLV. of 1860) ss. 178 and 179.*] Where the accused was charged under two heads, *first* with offence under s. 178 of the Penal Code committed on the 26th and the 29th August respectively; and *secondly* with offences under s 179 of the Penal Code committed on the above dates during the course of the same trial:—*Held*, *per* RAMPINI J, that the trial was under the special procedure provided for Presidency Magistrates, that no charge sheet was required to be drawn up that there was no trial in the sense of an investigation of the facts, that the petitioner had been convicted only of three offences, two of which were of the same kind, and that s 234 of the Criminal Procedure Code had not been contravened. *Subrahmania Ayyar* v. *King Emperor*, I L. R 25 Mad. 61, distinguished *Held*, further, that a Court acting under s. 482 of the Criminal Procedure Code is not bound to take proceedings on the same day, as it is when acting under s. 480. *Per* SHARFUDDIN, J., that the accused was not charged with, nor tried at one and the same trial for more than three offences of the same kind, and that s. 234 did not, therefore, apply but that the case fell within s. 235, and that there was, therefore, no misjoinder of charges.—BIPIN CHANDRA PAL *v* EMPEROR, I. L. R., 35 Cal 161.

Motor Car—

MOTOR CAR—*Bengal Motor and Cycle Act (III. of 1903), ss 3 and 4—Use of Motor car with permission of the owner to convey his friends in his absence—Liability of Owner for the acts of his Driver in contravention of the rules framed under the Act—Rules 4, 20.*] The owner of a motor car who expressly or impliedly permits his car to be used or driven by his servant is, if it is so used or driven as to contravene rule 20 of the rules framed under the Bengal Motor Car and Cycle Act (III. of 1903), himself liable therefor under Rule 4 and s. 4 of the Act, though he was not in the car at the time and had given his servant general instructions to observe the regulation speed, unless the latter has used it improprely for his own purposes. *Somerset* v *Wade*, 1 Q. B. D. *Somerset* v. *Hart* 12 Q. B. D. 360, *Collman* v. *Mills*, 66 L J. Q B. 170, and *Commissioner of Police* v *Cartman*, 1 Q. B. 655, referred to. —THORNTON *v.* EMPEROR, I. L. R., 38 Cal. 415.

Mukhtear—

1. MUKHTEAR—*Dismissal from the roll on conviction of an offence implying moral turpitude—Application for re-instatement after a lapse of years—Deliberate omission to disclose the facts of enhancement of sentence and of an order directing his prosecution for making a false affidavit—Power of the High Court to re-instate a legal practitioner after disbarment—Grounds of re-instatement.*] The High Court has power, when a legal practitioner has been dismissed for misconduct of any description, in the widest sense of the term to re-admit him after a lapse of time if he satisfies the Court that he has in the interval conducted himself honourably, and that no objection remains as to his character and capacity. *King* v. *Greenwood*, 1 W. Black, 222, *Anonymous case*, 17 Beav 475, *In re Smith*, unreported, cited in 17 Beav. 477, *In re Robins* 34 L. J. Q. B 121, *In re Pyke*, 1 New Pract. Ca 320, *In re Pyke*, 6 B. & S. 703; 34 L. J. Q B. 121, *In re Pyke* 34 L J. Q. B. 220; 6 B & S 707, *In re Brandreth*, 60 L. J. Q. B. 501, *In re Barber*, 19 Beav 378, *Boston Bar Association* v *Greenwood*, 168 Mass. 160; 46 N. E. 568, *In re Palmer*, 9 Ohio C. C. 55, *In re Boone*, 90 Fed. 793, *In re Treadwell*, 114 Cal. 24; 45 Pac. 993, *In re King*, 54 Ohio 415; 43 N. E. 686, *In re Enright*, 69 Ver. 317; 37 All. 1046, *In re Burris*, 147 Cal. 370; 81 Pac. 1077, *In re Essington* 32 Cal. 168; 75 Pac. 394, *In re Weed* 30 Mont 456; 70 Pac. 50, *In re Newton*, 27 Mont. 182; 70 Pac. 510. *In re Simpson*, 11 N Dak. 526; 93 N W. 918, *In re Sullivan*, 185 Mass. 426; 70 N. E. 411, *Incorporated Law Institute* v. *Meagher*, 9 Com. L. R. 655, *In re Pearson*, unreported, *In re Smith*, unreported; *In re Rupnath*

Mukhtear (*contd.*)—

Banerji, unreported, *In re Kally Prosonno Chatterjee*, unreported, *In re Nobin Krishna Mookerjee*, unreported, followed. *Ex parte Frost*, 1 Chitty 558, note, *In re Hawdane*, 9 Dowl. Pr. Ca. 970, *In re Garbett*, 18 C. B. 403, *In re Poole*, L. R. 4 C. P 350, *In re Abinash Chandra Moitra*, I. L. R., 37 Cal. 173, *In re Chanda Singh*, 11 C. L. J., 438, 14 C. W. N. 521, and *Smith* v *Justices of Sierra Leone*, 7 Moo. P. C. 174, referred to, *In re Lamb*, 23 Q. B. D. 477, distinguished. Where a Mukhtear was struck off the roll on conviction of kidnapping a minor girl, under s. 363 of the Penal Code, under circumstances of an aggravated character, implying moral turpitude, and applied after seven years for re-instatement, but deliberately omitted to disclose the facts that the High Court had enhanced his sentence and had also directed his prosecution under s. 193 of the Penal Code for making a false affidavit in the course of a proceeding in revision, the application for re-instatement was rejected—IN RE ABIRUDDIN AHMED, I. L. R., 38 Cal. 309.

2. MUKHTEAR—*Authority to practise in the Courts of Magistrates and Sessions Judges—Limitation of authority—Necessity of permission of the Court in each particular case — Grounds of permission — Criminal Procedure Code (Act V. of 1898, ss. 4 (r.), 340—Practice.*] Under ss. 4 (*r*) and 340 of the Criminal Procedure Code, a mukhtear is subject to the permission of the Court in each particular case, authorised to practice both before Magistrates and Sessions Judges. There is no general rule that Mukhtears should be allowed to appear in every case in the Courts of Magistrates, and that they should not be permitted to appear in any case in the Courts of Session. The Magistrate and the Judge must decide in each case whether he will permit a mukhtear to appear. Though it is not desirable that mukhtears should be permitted to appear in Sessions Courts where their appearance is unnecessary, or where there is no reason for their appearance, the question is one which must be decided independently in each case, and no general rule can be laid down It depends largely on whether the accused is in a position to employ a vakil or pleader and whether he elects to do so But the defence of an accused should not be shut out merely by the fact that he is represented by a mukhtear. —ISHAN CHANDRA BHUTT *v.* EMPEROR, I. L. R., 38 Cal 488.

Municipality—

1. MUNICIPALITY—*Bengal Municipal Act (Ben. Act III. of 1889), ss. 270, 350.*] The bye-law No. 64 passed under s. 350 of the Bengal Municipal Act is *ultra vires* so far as it authorises the Municipality to interfere with private property. It is only a road or drain *belonging to the Municipality* that is contemplated by s. 370, cl. (2) of the Act.—MAHESH CHANDRA PANDEY *v.* BASANTA KUMAR DAS, 10 C. W. N. 667.

2. MUNICIPALITY — *Building — Demolition of—Re-assessment of premises, including portion objected to—Magistrate, discretion of—Calcutta Municipal Act (Ben. Act III. of 1899)—Jurisdiction of the High Court to set aside the order.*] The petitioner completed certain additions to his premises in August 1902, deviating to some extent from the sanctioned plan, and he also erected a cooking-shed at the beginning of 1903 without permission. A part of the premises was re-valued and its assesment increased, in March 1903 in consequence of the improvements made, including the deviations. In May 1903, a prosecution was instituted against him in respect of the cooking-shed only, and an order for partial demolition passed in August of the same year. The rest of the premises was re-assessed in September 1904 at a higher rate on account of the improvements. In February 1905, a notice was served on the petitioner to show cause why the additions, which were not in accordance with the sanctioned plan, should not be demolished, and an order was made by the Magistrate in August 1905 directing the demolition of such portion of the premises: *Held* that under s. 449 of the Calcutta Municipal Act it is discretionary with the Magistrate to pass an order of demolition or not, and that under the circumstances of the case, the order was not a fair or proper one and could be set aside by the High Court.—ABDUL SAMAD *v.* CORPORATION OF CALCUTTA, I. L. R., 33 Cal. 287; 10 C. W. N. 182.

3. MUNICIPALITY — *Calcutta Municipal Act (Ben Act III. of 1899), ss. 408, 574.*] Directions given in a notice under s. 408 of the Calcutta Municipal Act to the owners of property during the pendency of litigation in respect of that property, cannot be said to be lawfully given, if it is not open to the owners at the time either individually or collectively to alter the property by carrying out the improvements mentioned in the notice.—POORNA CHAND BURAL *v.* CORPORATION OF CALCUTTA, I. L R., 33 Cal. 690.

4 MUNICIPALITY — *Calcutta Municipal Act (Ben. Act III. of 1899), s. 449—Demolition—Deviation from sanctioned plan—Building in existence before sanction—Sanction not relating to such building.*] S. 449 of the Calcutta Municipal Act does not give

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authority to the Magistrate to direct the demolition of the whole or any part of a building, which was in existence before the sanction was given, but only of a building erected in contravention of the plan submitted to and sanctioned by the Corporation.—HYAM *v.* CORPORATION OF CALCUTTA, I. L. R., 33 Cal. 646; 10 C. W. N. 1004.

5. MUNICIPALITY — *District Municipalities Act (Mad. Act IV. of 1884), ss. 197, 191—Market, definition of—Use of, as market, what amounts to.*] Private property is used as a market when it is used as a public place for buying and selling. Where a private market had been ordered to be closed, a person using the place for selling fish and flesh after a license had been refused is guilty of an offence under s. 197 of the Madras District Municipalities Act, or at any rate, of an offence under s. 191.—ABU BAKER *v.* THE MUNICIPALITY OF NEGAPATAM, I. L. R., 29 Mad. 185.

6. MUNICIPALITY — *Bombay Municipal Act (Bom. Act III. of 1888), s. 3, cls. (w), (x), (y), s. 461—Building—Bye laws Nos. 40, 42—Street—Construction.*] The owner of a large plot of ground abutting on a highway divided the plot into 19 small plots and sold them to different purchasers. These plots were mapped out as abutting on the sides of two parallel roads which were marked out as proposed roads. Each of the purchasers of the plots entered into a covenant with the owner to keep open that portion of the proposed road which stood in front of his plot and to prepare so much of the road. The question arose whether the proposed road was a street within the meaning of the City of Bombay Municipal Act (Bom. Act III. of 1888): *Held* that the proposed road would constitute a street within the meaning of the City of Bombay Municipal Act (Bom. Act III. of 1888).—MUNICIPAL COMMISSIONERS OF BOMBAY *v.* MATHURABAI, I. L. R., 30 Bom. 558.

7. MUNICIPALITY —*City of Bombay Municipal Act (Bom. Act III. of 1888), s. 249—Place of public resort—Theatre.*] A theatre is a place of public resort and as such falls within the purview of s. 249 of the City of Bombay Municipal Act (Bom. Act III. of 1888).—EMPEROR *v.* DWARKADAS, I. L. R., 30 Bom. 392.

8. MUNICIPALITY—*City of Bombay Municipal Act, (Bom. Act III. of 1888), ss. 410, 24, sch. D (4)—Prohibition of sale of fish except in a market—Sale from a basket placed on the Chowpatti foreshore — Sale from a vessel—Private market—Onus of proof—City of Bombay, limits of—Bombay General Clauses Act (Bom. Act I. of 1904),* **Municipality** (*contd.*)—

s. 3 (10).] The accused, a fisherwoman, was charged under s. 410 (1) of the Bombay City Municipal Act (Bom. Act III. of 1888), with selling or exposing for sale, without a license from the Municipal Commissioner, fish intended for human food, on the Chowpatti foreshore, in the City of Bombay. The sale was from a basket, which the accused had placed on the sand, at some distance from the water, between the high and low water mark. The fish sold was fresh fish and was brought from one of the boats then in Back Bay. The Presidency Magistrate acquitted the accused on the grounds that (1) the Bombay City Municipal Act did not apply as the place of sale was outside the limits of the City of Bombay as laid down in the City of Bombay Municipal Act; (2) s. 410 of the Act had no application because the place was a private market establishsd from time immemorial; and (3) the sale fell within s. 410 (2) of the Act. On appeal, against this order of acquittal, by the Government of Bombay: *Held*, reversing the order of acquittal and convicting the accused, that the accused, was not protected by s. 410 (2) of the Bombay City Municipal Act (Bom. Act III. of 1888), since it was impossible in the present case to say that the fish had been sold from a vessel, when as a matter of fact it had been sold from the basket on the shore, it having been brought from the vessel which was in the water. *Held*, also, that the onus of proving that the place in question was a "private market" lay upon the accused. *Held* further, that the Bombay City Municipal Act (Bom. Act III. of 1888) applied to the spot in question, because it came within the expression "City of Bombay" as defined by the Bombay General Clauses Act (Bom. Act I. of 1901).—EMPEROR *v.* BUDHOOBAI, I. L. R., 30 Bom. 126.

Municipal Offence—

1. MUNICIPAL OFFENCE—*Bengal Municipal Act (Ben. Act III. of 1884), ss. 155, 156—Ferry, Meaning of—Boat plying for hire without license within prescribed limits of ferry—Right of ferryman to demand tolls.*] The expression "a ferry" in the Bengal Municipal Act means the exclusive right to carry passengers across the stream from one bank to the other, on payment of certain prescribed tolls. The object of s. 155 of that Act appears to be to prevent the crossing of passengers from one bank of the river to the opposite bank by a boat plying for hire without a license within the prescribed limits. *Semble*, therefore, that the mere crossing of the bar of a *khal* leading into the limits of a municipal ferry would not constitute a breach of the Act. A ferryman has no authority to demand tolls from

Municipal Offence (*contd.*)—

persons who are merely passengers in an unlicensed boat. The remedy against the person who keeps a ferry-boat without a license, plying within the prescribed limits, is provided by s. 156 of that Act.—THE GOVERNMENT OF BENGAL *v.* SENAYAT ALI, I. L. R., 27 Cal. 317.

2. MUNICIPAL OFFENCE—*City of Madras Municipal Act (Mad. Act I. of 1884), s. 307—Prohibition against depositing stable-refuse in a street—Deposit of stable-refuse in a dust-bin—Liability of person so depositing.*] By the first clause of s. 307 of the City of Madras Municipal Act, 1884, the president of the municipality "shall provide in the streets of the city suitable and sufficient dust-bins for the temporary deposit of dust, dirt, ashes, kitchen-refuse, and other inoffensive matter, excepting building, stable, and garden-refuse, which shall be removed by the owner thereof." By the second clause of the same section, "whoever, after such provision has been made, deposits any of the said matters, or any building, stable, or garden-refuse, in any street, pavement or verandah of any building," . . . . is rendered liable to fine. Petitioner, having deposited stable-refuse in one of the dust-bins provided in accordance with the Act, was charged before a Magistrate, and fined under the latter clause of the said section. *Held* that the dust-bin was not a part of the street, and that the throwing of stable-refuse into the dust-bin was not a deposit of such refuse in the street so as to constitute an offence under the said section.—PERUMAL *v.* MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, I. L. R., 23 Mad. 164.

3. MUNICIPAL OFFENCE—*District Municipalities Act (Mad. Act IV. of 1884), Bye-law No. 48—District Municipalities Act Amendment Act (Mad. Act III. of 1897)—Covering a drain without municipal permission.*] A bye-law of a municipality had been framed under the powers conferred by an Act of 1884 as amended by an Act of 1897, and was to the following effect: "No public drain shall be covered without the permission of the municipal council." It had come into force in 1890. Prior to its coming into operation an earlier bye-law had subsisted, in substantially the same terms. An occupier of premises, who had covered a drain during the subsistence of the earlier bye-law, was charged with having committed an offence under the later bye-law, and contended, by way of defence, that he could not be convicted, inasmuch as the act complained of had been committed before the passing of the Act under which the complaint was laid. He was convicted by a Bench of Magistrates. *Held* that the conviction was right. *Per* ARNOLD WHITE, C. J.—The bye law applies to all drains which existed in a covered state at the time when it came into operation. The word "shall" is used throughout the bye-laws in the imperative, and not with reference to time, and this is the sense in which it is used in the bye-law in question. *Per* BENSON, J.—A bye-law similar in terms to that under which the accused had been convicted having been in existence under the then Municipal Act at the time when the accused first covered the drain in question, the liability then incurred by him continued, under the General Clauses Act (Madras), unaffected by the passing of the present Municipal Act. The contention that the accused could not be convicted, because the act complained of was committed before the present Municipal Act was passed, therefore, failed.—PARIMANAM PILLAI *v.* CHAIRMAN, MUNICIPAL COUNCIL, OOTACAMUND, I. L. R., 23 Mad. 213.

4. MUNICIPAL OFFENCE — *Building — Commencement of Second storey to house—Rebuilding house—Alteration — Encroachment — Whether permission from Municipality necessary—Order for demolition of addition—Bengal Municipal Act (III. of 1884), ss. 175, 235, 236, 237, 238, and 273—Criminal Procedure Code (Act V. of 1898) ss. 438 and 439*] The accused commenced building a second storey to his house without permission of the Municipality. He was convicted under 273 (*1*) of the Bengal Municipal Act of 1884, and, in addition to a sentence of fine, the Magistrate as Chairman of the Municipality in the same order directed the demolition of the addition made to the house. *Held*, that the whole order was illegal. The case did not come under s. 273 (*1*) of the Act, and there was no necessity for the accused to have obtained permission.—EMPEROR *v.* MATHURA PRASAD, I. L. R., 29 Cal. 491.

5. MUNICIPAL OFFENCE—*City of Madras Municipality Act (Mad. Act I. of 1884), s. 341—Liability of Government under taxing Acts when not expressly mentioned—Prerogatives of the Crown—Indian Councils Act, 1861—24 and 26 Vict., c. 67, s. 42.*] The Superintendent of the Government Gun Carriage Factory in Madras having brought timber belongingto Government into Madras without taking out a license and paying the license-fees prescribed by s. 341 of the City of Madras Municipal Act, was prosecuted to conviction by the Municipal Commissioners. *Held*, on revision, that timber brought into Madras by or on behalf of Government is liable to the duty imposed by s. 341 of the

Municipal Offence (*contd.*)—

City of Madras Municipal Act although Government is not named in the section. According to the uniform course of Indian Legislation, Statutes imposing duties or taxes bind Government unless the very nature of the duty or tax is such as to be inapplicable to Government. *Per curiam*: —Under the Indian Councils Act, 1861, a ProvincialCouncil has, subject to the restrictions as those imposed by the Act on the Governor General's Council, power to affect the prerogative of the Crown by Legislation.—BELL *v* THE MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, I. L. R., 25 Mad. 457.

6 MUNICIPAL OFFENCE — *Bombay City Municipal Act (Bom. Act III of 1888), s. 249—Notice to construct urinals in a particular place in the owner's premises—Illegality of such notice.*] Accused was convicted and fined Rs 50 for not complying with a notice issued by the Municipal Commissioner of Bombay under s. 219 of Bom Act III of 1888. The notice required him to construct a urinal of six compartments in the open space inside the entrance gateway to the Cloth Market from Champawady and a water-closet in the corner of the entrance from 1st Ganeshwady near the fire-engine station. *Held*, reversing the conviction and sentence, that the notice was *ultra vires*, inasmuch as it is required the accused to construct urinals in a particular place in his premises.—IN RE KHIMJI JAIRAM, I. L. R., 24 Bom. 75.

7. MUNICIPAL OFFENCE—*Bombay City Municipal Act (Bom. Act III. of 1888), s. 381—Low ground—Low lying ground—Notice by Municipal Commissioner requiring owner of low-lying ground to fill it with sweet earth up to a certain level.*] Under s. 381 of the Bombay Municipal Act (III. of 1888), the Municipal Commissioner for the City of Bombay issued a notice to the appellant as owner of certain low-lying ground. The notice stated that in the opinion of the Commissioner, the ground accumulated water in the monsoon, and caused nuisance to the tenants of two chawls situated on the premises. The owner was, therefore, required by the notice "to fill in the low-lying ground with sweet earth to the level of the road and slope it towards the new drain on the road side." As the owner refused to comply with the notice, he was convicted and sentenced to pay a fine of Rs. 15 by the Presidency Magistrate under s. 471 of the Municipal Act (Bom. Act III of 1888). *Held* reversing the conviction and sentence, that the notice was illegal. The words used in s. 381 are "low ground," which is not the same as low-lying ground. And though the section gives power to the Commissioner to require the owner of low ground to cleanse and fill up the same, it does not permit him to issue an order that an indefinite extent of low lying ground shall be filled up, much less that it shall be filled up to some particular level, or filled up with sweet earth, or that it shall be sloped in a particular direction. — MUNICIPAL COMMISSIONER OF BOMBAY *v.* HARI DWARKOJI, I. L. R., 24 Bom. 125.

8. MUNICIPAL OFFENCE—*N.-W. P. and Oudh Municipalities Act (XV. of 1883), s. 46—Issue of distress-warrant for recovery of alleged arrears of municipal tax—Jurisdiction of Magistrate.*] *Held* that where a Magistrate, acting under s. 46 of Act XV of 1883 issues a warrant for the realization of arrears of municipal taxes alleged to be due, the Magistrate is acting in a ministerial capacity only, and has no jurisdiction to inquire as to whether such arrears are really due or not.—ELLIS *v.* THE MUNICIPAL BOARD OF MUSSOORIE, I. L. R., 22 All. 111.

9. MUNICIPAL OFFENCE—*N.-W. P. and Oudh Municipalities Act (XV. of 1883) s. 69—Complaint of offence against municipal bye-law—Power of Municipal Board to give a general authority to institute complaints on its behalf.*] *Held* that s. 69 of the N.-W. P. and Oudh Municipalities Act, 1883, confers upon Municipal Boards in the North-Western Provinces and Oudh the power to delegate generally their authority to make complaints in respect of municipal offences; and this general delegation includes not merely the giving of authority to do the formal Act of presenting a complaint to a Court, but the exercise of discretion as to whether in any given case, a complaint shall or shall not be made —POWELL *v.* THE MUNICIPAL BOARD OF MUSSOORIE, I. L. R., 22 All. 123.

Murder—

1. MURDER—*Penal Code, ss 84, 302—Unsoundness of mind.*] S, a man of weak intellect, was charged with murder, but the motive of the crime was trivial. Immediately after he committed the murder, he rushed about and shouting "Victory to *kali*" attempted to murder his own father and other persons. During the Police inquiry, he appeared to be of sound mind but immediately after attempted to commit suicide. After that he was insane for 5 years. *Held* that he was not guilty of murder, inasmuch as at the time of the occurrence, he by reason of unsoundness of mind, was incapable of knowing what he was doing.—SHIBO KOERI *v.* EMPEROR, 10 C. W. N. 74.

2. MURDER—*Unsoundness of mind—Disease brought on by voluntary drunken-*

Murder (*contd.*)—

ness—Criminal liability—Penal Code (Act XLV. of 1860), ss. 84, 85, and 302.] Under s. 84 of the Penal Code unsoundness of mind producing incapacity to know the nature of the act committed or that it is wrong or contrary to law is a defence to a criminal charge, but by s. 85 of that Code such incapacity is no defence, if produced by voluntary drunkenness. If, however, voluntary drunkenness causes a disease which produces such incapacity, then s. 84 applies, though the disease may be of a temporary nature.—EMPEROR *v.* BHELEKA AHAM, I. L. R., 29 Cal. 493.

3. MURDER—*Violent and determined attack by a number of persons, regardless of the consequences, on another causing other injuries and severe ruptures of a healthy spleen—Intent to cause death or such bodily injury as the offender knows to be likely to cause death—Penal Code (Act XLV. of 1860) ss. 300 (1), (2), and 302.*] A body of six persons attacked another with cattle goads in a violent and determined manner, inflicting sixteen wounds on his body and causing several and severe ruptures of his spleen, and so caused his death. The person attacked was a strongly built man of 35 years of age, and his spleen was in a healthy state:—*Held*, that such acts, committed by several persons on one, in such a manner, apparently regardless of the consequences, and with such results, warranted the inference that the acts were done by those persons with the intention either of causing the death of the person attacked or such injuries as the offenders knew to be likely to cause his death: and that the offence amounted to murder. —ELEM MOLLA *v.* EMPEROR I. L R., 37 Cal. 315.

4. MURDER—*Provocation, grave and sudden—Accused — Wife—Intrigue—Culpable homicide not amounting to murder—Penal Code (Act XLV. of 1860), ss. 300, 302, 304.*] The deceased *H*, lived in the house of the accused *A*. *H* contracted an intimacy with *L*, the wife of *A*, in consequence of which he was turned out of the house. Subsequently on a certain night *H*, at the invitation of *L* went to the house of *A*, and was taken inside by her. Thereupon *A* and the other accused relatives of his seized *H*, carried him off to some distance, beat him, broke his arms and a leg, and left him. Three days later *H* died in consequence of the injuries. All the accused were convicted under s. 302 of the Penal Code and sentenced to transportation for life. *Held* that the circumstances under which *H* was found in the house of *A* on the night of the crime were sufficient to cause grave and sudden provocation to *A* and his relatives, within the meaning of s. 300, exception (1), of the Penal Code, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after *H* was caught in the house in the company of *L*. Conviction altered to one under s. 304 of the Penal Code and sentence reduced.—ABALU DAS *v.* THE KING-EMPEROR, I. L. R., 28 Cal 571.

N.

Negligence—

1. NEGLIGENCE — *Penal Code, s. 287.*] *Held* that the owner of a machinery, who has employed a competent man and gives him a free hand in the working of it, is not guilty of any offence, in case any accident occurs by the negligence or error of his servants.—KING-EMPEROR *v.* KANHAY MAL, 8. P. R., 1906 Cr.

2. NEGLIGENCE — *Railway Collision — Death by Rash or Negligent Act.*] The Bengal-Nagpur Railway is worked on the "line-clear and caution-message" system, no train being allowed to leave a station without a "line clear" certificate in a prescribed form to the effect that the line is clear up to the next station. The petitioner, the assistant station-master of Gomharria Station, who was on duty and busy issuing tickets to passengers, wrote out in the prescribed form-book the following conditional line-clear message although he had received no message from Sini Station: "On arrival of 15 down passenger at Gomharria, line will be cleared for No. 80 up goods train from Gomharria to Sini." All the particulars required by the rule were not filled in, no number was entered on it, nor was the time of arrival of the train filled in. The form-book was left in the station-master's room. The guard of No. 80 up goods train, which was waiting at Gomharria, entered the station-master's room in his absence, took the imperfect certificate out of the book, and, without reading it, appended his signature, passed it on to the driver, and gave the signal for the train to start—all without the knowledge of the petitioner. The result was a collision between the 15 down passenger train and the 80 up goods train, causing the death of several persons. The petitioner was convicted under s. 304A of the Penal Code and s. 101 of the Indian Railways Act of 1890, and sentenced to rigorous imprisonment. *Held* that the act of the petitioner did not in itself endanger the safety of other persons, and that the effect

Negligence (*contd.*)—

was too remote to be attributable to such a cause. *Sant Dass* v. *The Empress* (Ind. Ry. Cas. 722) followed.—SHANKAR BALKRISHNA *v* KING-EMPEROR, I. L. R., 32 Cal. 73.

3. NEGLIGENCE—*Hurt by Gun.*] *Held*, that the causing of hurt by negligence in the use of a gun would fall within the purview of s. 337, rather than of s. 286 of the Penal Code. But, where all the evidence against the accused was that he went out shooting in the month of July when people were likely to be about in the fields, and that a single pellet from his gun struck a man who was sitting in a field, it was *held* that this was not sufficient evidence of rashness or negligence to support a conviction under s. 337 of the Code.—EMPEROR *v.* ABDUS SATTAR, I. L. R., 28 All. 464 : 3 A. L. J. 332.

Newspaper Incitements to Offences—

1. NEWSPAPER INCITEMENTS TO OFFENCES—*Act (VII. of 1908), s. 3—Order—Forfeiture of press.*] S. 3 of the Newspaper (Incitements to Offences) Act, 1908, provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. The section refers to the whole of the press: and no order could be made under it limited only to such portions of the press as were employed in printing the offending newspaper.—DHONDO KASHINATH PHADKE, IN RE 34 Bom. 327.

2. NEWSPAPER INCITEMENTS TO OFFENCES—*Act (VII. of 1908), s. 3—Nature of offences under the Act—Incitement to assassination—"Incitement," meaning of—Direct or indirect incitement—General incitement, not addressed to particular persons—Construction of offensive article.*] The question of the intention or knowledge of an individual may determine his criminal liability under the ordinary law of abetment by incitement by means of words, written or spoken, but under the Newspapers (Incitements to Offences) Act no question of the intention of the writer, printer or publisher arises, and no personal liability is imputed to any particular person. The order thereunder is not one against any person, but is purely restrictive and directed against the use, or intended use, of a press for the purpose of printing or publishing a newspaper containing any incitement to murder or to any offence under the Explosive Substances Act (VI. of 1908) or to any act of violence. The words "*any incitement*" in s. 3 (1) of the Newspapers Act include direct and indirect incitement, and need not be addressed to any particular person, nor expressed in violent

Newspaper Incitements to Offences (*contd.*)—

and outrageous terms. To "*incite*" means "to move to action, to stir up, to stimulate, to instigate or to encourage," and a newspaper article comes within the scope of s. 3 if it is, as a matter of fact, calculated, directly or indirectly, to produce that effect. *Per* RYVES, *J.*—There can be no hard and-fast canon as to what words or given set of words constitute "incitement." It is a question of fact in each case, and must usually depend largely on concomitant circumstances. The article must be read as a whole and, as far as possible, in the sense in which it was read by the section of the public to which it was primarily addressed, and also considered with regard to the occasion and place of publication and the class or status of persons likely to be affected by it.—GIRIJA SUNDAR CHUKERBUTIY *v.* EMPEROR, I. L. R., 36 Cal. 405.

Northern India Canal and Drainage—

NORTHERN INDIA CANAL AND DRAINAGE—*Act VIII. of 1873, ss. 7, 70—Act No XLV. of 1860 (Indian Penal Code), s. 426—Cutting walls of canal—Mischief—Penal Provisions of the Canal Act not exclusive of the Indian Penal Code.*] *Held*, (1) that s. 70 of the Northern India Canal and Drainage Act, 1873, does not bar the prosecution of an accused person under any other law, for any offence punishable under the Canal Act, (2) that it is an act for wilful mischief punishable under the Indian Penal Code for any person to make a breach in the wall of a canal.—EMPEROR *v.* BANSI, I. L. R., 31 All. 210.

Northern India Ferries—

NORTHERN INDIA FERRIES—*Act XVII. of 1878 s. 22—Ferry—Illegal toll taken by servants of lessee—Lessee himself not responsible.*] *Held* that the lessees of a ferry could not be held responsible under s 29 of the Northern India Ferries Act, 1878, for the taking of unauthorized tolls by their servants when they were not present and took no part in the extortion. *Queen-Empress* v. *Tyab Ali*, I. L. R., 24 Bom. 423, distinguished.—EMPEROR *v.* BEHARI LALL, I. L. R., 34 All. 146.

Nuisance—

NUISANCE—*Public and private nuisance—Erection of a high wall on one's own land very close to another's dwelling house—Likelihood of injury to the health of the inmates of the adjoining tenements and of the public inhabiting the neighbourhood by the propagation of disease—Propriety of order of partial demolition—Feasibility of other remedial measures—Calcutta Municipal Act (Beng. III. of 1899) s. 632.*] The words "any nuisance" in s. 632 of the

Nuisance (*contd.*)—

Calcutta Municipal Act mean any nuisance as defined in s. 3 (*29*) thereof. The definition, though wider than that of a "public nuisance" at the common Law, does not extend to the inclusion of all private nuisances. *Bhagwan Das* v. *Rash Behari Mutlick*, 14 C. W. N. 637, explained. The erection of a wall, however high, on one's own land very close to the dwelling-house of a neighbour, in order to prevent him from acquiring a right of easement, is not in itself a nuisance under the Calcutta Municipal Act, but where the evidence shows that it is, or is likely to be injurious to the health of the residents of the adjoining tenements and of the public inhabiting the neighbourhood, by propagating the seeds of consumption and typhoid, it becomes a nuisance under the Act. Where, however, the only matter which causes a wall to be a nuisance is not its height but the accumulation of filth at the bottom and want of space to clear the drainage between it and the adjacent house, the Magistrate, instead of ordering its reduction in height, should consider whether the nuisance cannot be abated by the adoption of other remedial measures. The use of the Act for the purpose of interfering in any way with the rights of private ownership, beyond the limited powers given to the Corporation by it for the necessary protection of the public and the enforcement of proper sanitation, is much to be deprecated.—KHAGENDRA NATH MITTER *v.* BHUPENDRA NARAIN DUTT, I. L R., 38 Cal. 296.

O.

Oaths Act—

OATHS ACT (X. OF 1873), SS. 4, 5—*Penal Code (Act XLV. of 1860), s. 193—'Judicial proceeding' — Criminal Procedure Code (Act V. of 1898), s. 164—Magistrate empowered to administer oath when taking statements under s. 164 of the Criminal Procedure Code.*] A Magistrate taking statements under s. 164 of the Code of Criminal Procedure is acting in discharge of duties imposed on him by law and is empowered to administer an oath under ss. 4, 5 of the Oaths Act. An investigation under Chapter XIV. of the Code of Criminal Procedure is a stage of a judicial Proceeding and a person making on oath a false statement in the course of such investigation commits an offence under s. 193 of the Penal Code. *Queen-Empress* v. *Alagu Kone* (I. L. R., 16 Mad. 421), followed.—SUPPA TEVAN *v.* EMPEROR, I. L. R., 29 Mad. 89.

Obscene Pamphlet—

OBSCENE PAMPHLET — *Penal Code, s. 292—Distributing obscene pamphlet—Definition—Intention*] The test of obscenity, with reference to a charge of distributing obscene literature, is whether the tendency of the matter is to deprave and corrupt whose minds are open to such immoral influences and into whose hands a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress. *Empress* v. *Indarman*. (I. L. R., 3 All 837), *Queen-Empress* v. *Parashram Yeshvant* (I. L. R., 20 Bom. 193), and *The Queen* v. *Hicklin*, (L. R., 3 Q. B. 300) referred to. The question whether a publication is or not obscene is a question of fact. If a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. — EMPEROR *v.* HARI SINGH, I. L. R., 28 All. 100.

Obscene Post-Cards—

OBSCENE POST-CARDS — *Post-Cards containing obscene advertisement—Post Office Act (VI. of 1898), ss. 20 61.*] Transmission by post of printed post-cards containing an advertisement of a patent medicine, in language of an obscene character, is an offence within ss. 20 and 61 of the Post Office Act (VI. of 1898). *The Queen* v. *Hicklin*, L. R. 3 Q. B. 360; *Empress of India* v. *Indarman*, I. L R. 3 All. 837; and *Queen-Empress* v. *Parashram Yeshvant*, I. L. R., 20 Bom. 193 relied upon.—SARAT CHANDRA GHOSE *v.* KING EMPEROR, I. L. R. 32 CAL. 247.

Obscene Publication—

OBSCENE PUBLICATION — *Religious poem of spiritual and allegorical character based on an incident narrated in a sacred book of great antiquity and dealing with the acts of divine beings — Work not calculated to deprave or corrupt morals — Penal Code (Act XLV. of 1860), s. 292—Finding of facts.*] The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands such a publicatiou might fall. If in fact the work is one which would certainly suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character, its publication is an offence, though the the accused has in view an ulterior object which is innocent or even laudable. *Reg* v. *Hicklin*, L. R. 3 Q. B 360, *Steele* v. *Brannan*, L. R. 7 C. P. 261, *Queen-Empress* v.

Obscence Publication (*contd.*)—

Parashram Yeshvant, I. L R. 20 Bom. 193, *Emperor* v. *Hari Singh*, I. L. R. 28 All. 100, *Empress* v. *Indarman*, I. L R. 3 All. 837, followed. A religious or classical work does not become obscene, within s. 292 of the Penal Code, simply on account of its containing some objectionable passages, because the tendency of such publications is not to deprave or corrupt morals. If objectionable passages in a religious book are extracted and printed separately, and they deal with matters which are to be judged by the standard of human conduct, as where they relate to immoral acts of human beings, and the tendency of such publication is to deprave and corrupt those whose minds are open to immoral influences, the publication may not be justified, though the passages form part of a religious book. Where, however, a story which appears objectionable is taken from a religious book and printed separately, but it relates to beings whose conduct is not to be judged by the standard of human beings, it is not an obscene publication, as it would not, on account of its religious character, raise immoral thoughts in the minds of persons who believe in the divinity of beings whose acts and conduct are described in the story. Where a poem was published in the Uriya language containing a story, complete in itself so far as it goes of the dalliances of Radha and Krishna, who were described as divine personages and their acts as supernatural, the latter being represented to be a boy of five, taken from the Uriya *Haribans*, a very sacred book of the Uriyas, the incident and sentiments being the same as, and the language not more objectionable than, that of the original, and it was in itself an old religious book of a spiritual and allegorical character, which had often been published and registered without exception taken, and which was apparently intended for Hindus who form the vast majority of the Uriyas and believe in the divinity of Radha and Krishna, and do not consider their doings as immoral: *Held*, that the publication was not obscene within the meaning of s. 292 of the Penal Code.—KHERODR CHANDRA ROY CHOWDHURY *v.* EMPEROR I. L. R. 39 CAL. 377.

Obstruction on Public Grounds—

OBSTRUCTION ON PUBLIC GROUNDS—*Criminal Procedure Code, s. 133—Order for removal of obstruction on public land—Defence raising question of title—Procedure.*] When in a matter under section 133 of the Code of Criminal Procedure the person called upon to show cause raises a question of title, it is for the trying Magistrate to decide whether the question so raised is raised *bona fide*. But the trying Magistrate ought not to go further and decide whether the title set up does or does not exist—EMPEROR *v.* DOST MUHAMMED, I. L. R, 28 All. 98.

Obstruction on Public Grounds (*cld.*)

Offence committed outside British India—

OFFENCE COMMITTED OUTSIDE BRITISH INDIA—*Criminal Procedure Code* (*Act V. of 1898*), *s. 188—Offence committed outside British India by a Native Indian subject of His Majesty — Certificate of Political Agent not obtained before making inquiry.*] Where an inquiry into an offence to which s. 188 of the Code of Criminal Procedure was applicable was commenced without the certificate provided for by that section having been obtained, it was *held* that the proceedings were void, and that the subsequent commitment to the Court of Session must be quashed, notwithstanding that the necessary certificate was in fact granted some days before the commitment was made, though at the time of the commitment being made it had not come into the hands of the Committing Magistrate.—EMPEROR *v.* KALI CHARAN, I. L. R., 24 All. 256.

Opium Act—

1. OPIUM ACT—*Act* (*I. of 1878*), *ss 5, 9—Master and servant—Liability of master for act of servant.*] Where the servant of a licensed vendor of opium, in the course of his employment as such servant, sold opium to a person under the age of fourteen years, it was *held* that the licensed vendor also was liable under s. 9 of the Opium Act even though he might not have been aware of the sale. *Queen Empress* v. *Tyab Ali*, I. L. R, 24 Bom. 423, followed.—EMPEROR *v.* BABU LAL, I. L R., 34 All. 319.

2. OPIUM ACT—*Act* (*I. of 1878*), *s. 9—Possession of illicit opium—Custody of a locked box containing opium lawfully belonging to the owner of the box.*] A locked box containing the stock of opium and books of a licensed vendor of opium, the key of which was kept by the owner, was found in the house of a person who lived next door to the shop of the opium vendor, and it appeared that the opium vendor, instead of taking his box home with him at night, was in the habit of leaving it with his neighbour for safe custody. *Held*, that the custodian of the box could not be properly convicted of the offence of unlawful possession of opium, inasmuch as the possession of the opium was not his, but that of the legitimate owner.—EMPEROR *v.* GAJADHAR, I. L R., 25 All. 262.

3 OPIUM ACT—*Act* (*I. of 1878*), *s. 9—Rule 16, s. 14—Search.*] The fact that the

Opium Act (*contd.*)—

search leading to the discovery of opium, was illegal does not render a conviction under s. 9 of the Opium Act illegal.—CROWN *v.* NABU, 11 P. R., Cr.

Opium, illegal possession of—

1. OPIUM, ILLEGAL POSSESSION OF—*Opium Act (I. of 1878), s. 9 (c)—Possession of railway receipt for an undelivered parcel of contraband opium.*] The possession of a railway receipt relating to an undelivered parcel of contraband opium lying in a railway office, under circumstances showing knowledge of its contents, constitutes possession of the opium within s. 9, cl. (*c*) of the Opium Act. *Kashi Nath Bania* v. *Emperor*, I. L. R., 32 Cal. 557, discussed and followed.—ASHRUF ALI *v.* EMPEROR, I. L. R, 36 Cal. 1016.

2. OPIUM, ILLEGAL POSSESSION OF—*Opium Act (I. of 1878), s. 9, cl (c)—Potential possession—Possession of railway receipt for an undelivered parcel containing opium—Guilty knowledge*] The possession of a railway receipt by the consignee of an undelivered parcel of contraband opium, under circumstances showing that he was aware of the contents of the parcel and that it was sent to him with his full knowledge amounts to "possession of opium," within the meaning of s. 9, cl. (*c*) of the Opium Act. *Reg.* v. *Hill*, 1 Den. C. C. 453 and *Reg.* v. *Wiley*, 2 Den. C. C. 37 referred to.—KASHI NATH BANIA *v.* EMPEROR, I, L. R. 32 Cal. 557.

3. OPIUM, ILLEGAL POSSESSION OF—*Opium Act (I. of 1878), ss. 9 (c), 10—Mere possession contrary to the Act without guilty frame of mind—Respective liabilities of owner of boat and crew—Presumption of commission of offence under the Act—"Conveyance"—Boat.*] Under ss 9 (*c*) and 10 of the Opium Act (I. of 1878), mere possession of opium without being able to account for it satisfactorily, apart from any frame of mind, is an offence. The owner of a boat in which opium is found is in possession of it, but not the crew when they are neither owners nor jointly interested with him in any venture as an incident of which possession might be attributed to them. Where the owner of a boat alleged that opium was carried on board by a passenger without his knowledge, but there were circumstances disproving his story: *Held*, that as he had not satisfactorily accounted for its possession, it must be presumed, under s. 10, that it was opium in respect of which he had committed an offence under the Act. *Quære:* whether a boat in which opium is carried is a "conveyance" used in carrying it so as to be liable to confiscation on conviction of the owner under the

Opium, illegal possession of (*ctd.*)—

Act.—EMPEROR *v.* HAMID ALI, I. L R., 37 Cal. 24.

Opium, illicit sale—

OPIUM, ILLICIT SALE—*Proof of the factum of the sale—Presumption from inability to account satisfactorily for opium in absence of evidence of any sale—Opium Act (I. of 1878), ss. 9, 10.*] The effect of ss. 9 and 10 of the Opium Act, 1878, is that, when once it is proved that the accused has dealt with opium in one of the ways described in s. 9, the *onus* of showing that he had a right so to deal with it is placed on him by s. 10 But the commission of the act, which is the foundation of the particular offence charged under s. 9, must be proved before the presumption raised by s. 10 comes into operation at all, and the presumption cannot be used to establish such act. Where, therefore, there is no evidence to prove the fact of any sale of opium by a person accused of illicit sale, the deficiency is not supplied by the statutory presumption, and a conviction of illicit sale is bad.—ISHWAR CHANDRA SINGH *v.* EMPEROR, I. L. R., 37 Cal. 581.

Order for Security for keeping the peace on conviction—

1. ORDER FOR SECURITY FOR KEEPING THE PEACE ON CONVICTION—*Appeal—Appellate Court, power of, to set aside such order—Criminal Procedure Code (Act V. of 1898), ss. 106 and 423, cl. (d).*] *Held*, that an order in appeal setting aside an order of the first Court made under s. 106 of the Code of Criminal Procedure is an incidental order within the meaning of s. 423, cl. (*d*) of the Code, and can be made by an Appellate Court.—ABDUL WAHED *v.* AMIRAN BIBI, I. L. R., 30 Cal. 101.

2. ORDER FOR SECURITY FOR KEEPING THE PEACE ON CONVICTION—*Offences not within the terms of s. 106 of the Code of Criminal Procedure (Act V. of 1898)—Duty of Magistrate to record findings of fact, which make that section applicable.*] Where the offences of which a person is convicted do not in themselves, and apart from any other incidents, come within the terms of s. 106 of the Criminal Procedure Code, it is incumbent upon the Magistrate to record a clear finding with respect to the facts, which in his opinion make the provisions of that section applicable. *Jib Lal Gir* v. *Jogmohan Gir*, (I. L. R. 26 Cal. 576), followed.—BAIDYA NATH MAJUMDAR *v.* NIBARAN CHUNDER GOPE, I. L. R, 30 Cal. 93.

P.

Pardon—

1. PARDON—*Criminal Procedure Code (Act V. of 1898), ss. 337, 339—Tender of*

Pardon (*contd.*)—

pardon—Trial of person who, having accepted a pardon, has not fulfilled the conditions on which it was offered—Prosecution for giving false evidence—Sanction of High Court.] When a pardon under s 337 of the Criminal Procedure Code has been tendered to and accepted by, any person in connection with an offence, he should not be tried for any alleged breach of the conditions of his pardon, or for any offence connected with that for which he has received pardon until the trial of the principal offence has been completed. No prosecution for the offence of giving false evidence in respect of a statement made by a person who has accepted a tender of pardon should be entertained without the sanction of the High Court, as provided by s. 339, cl. (3) of the Code—QUEEN-EMPRESS *v.* NATU, I. L. R., 27 Cal. 137.

2. PARDON—*Forfeiture of pardon—Proper Court to determine the question of forfeiture—Withdrawal of pardon by the Court granting it—Power of the Special Bench to re-open the question on a plea of pardon taken at the trial for the original offence in respect of which it was granted—Criminal Peocedure Code (Act V. of 1898) ss. 337, 339.*] Where an approver, to whom a pardon was granted under s. 337 of the Criminal Procedure Code by the committing Magistrate, resiles, at the hearing of the case before the Special Bench, from his deposition given before such Magistrate, the Special Bench can only discharge him, but cannot take any action against him for the offence in respect of which he was accorded the pardon If he is proceeded against for the original offence, the committing Magistrate who granted the pardon must determine whether he has complied with its terms or not, and thereby forfeited the same; and the question cannot be re-opened at his trial before the Special Bench for such offence. *Queen-Empress* v. *Manick Chandra Sarkar*, I. L R., 24 Cal. 492, approved of. *Empress* v. *Kothia*, I. L. R., 30 Bom. 611, and *Kullan* v *Emperor*, I L. R., 32 Mad. 173, referred to. *King-Emperor* v. *Bala*, I. L. R., 25 Bom. 675, distinguished.—EMPEROR *v.* ABANI BHUSHAN CHUCKERBUTTY, I. L. R., 37 Cal. 345.

3. PARDON—*Practice — Criminal Procedure Code (Act V. of 1898), ss. 337, 339—Pardon tendered and accepted—Evidence given and pardon withdrawn by Magistrate—Forfeiture of pardon must be proved—When may forfeiture be declared and pardon withdrawn.*] A committing Magistrate having under s. 337 of the Criminal Procedure Code (Act V. of 1898) tendered a pardon to one of three accused persons examined him as a witness. Subesequently, however, the Magistrate, under s. 339 of the Code, withdrew the pardon on the ground that the accused had wilfully concealed a certain fact connected with the offence, and he committed him along with the other accused for trial at the Court of Sessions, where he was found guilty. In giving judgment the Sessions Judge expressed his opinion that the withdrawal of the pardon by the Magistrate was illegal, (1) because such withdrawal could not be made until the close of the trial, and should be made by the Court of Sessions, and (2) because the fact, the alleged concealment of which was the ground of the withdrawal, had not been proved. The accused, however, was found guilty and sentenced. On appeal to the High Court: *Held* that the conviction and sentence should be set aside on the ground that it had not been proved that the pardon had been forfeited under s. 339 of the Criminal Procedure Code (Act V. of 1898). The alleged fact, the concealment of which was the ground for withdrawing the pardon, had not been proved If the pardon which had been granted had not been forfeited under s 339, it was still in force, and the accused should be discharged. As the law stands the question in such cases is whether the accused has forfeited his pardon by some act of his own. The question is one of fact in which the Magistrate may hold one opinion and the Sessions Judge another, as may happen in the case of any other question of fact in issue in the case. The Sessions Court has to determine for itself on the evidence whether the pardon has been forfeited; for if not, the accused, who has accepted such pardon, cannot be tried. *Quære*—Whether the examination at the committal proceedings before the Magistrate of a person who has accepted a pardon satisfies cl (2) of s. 337 of the Code which provides that every such person shall be examined as a witness "in the case" or whether such person must be examined as a witness at the "trial." *Queen-Empress* v. *Bhau* (I. L. R., 21 Bom. 493) doubted.—KING-EMPEROR *v.* BALA, I. L, R., 25 Bom. 675

4. PARDON — *Criminal Procedure Code (Act V. of 1898), ss. 337, 338—Accomplice—Conditional pardon—The pardoned accomplice giving full and true story of the crime, but retracting it in cross-examination before the Sessions Court—Order of Sessions Court to committing Magistrate to withdraw the pardon—Forfeiture of pardon—Trial of accused for the offence—Commitment—Conviction on his plea of guilty—Irregularity.*] The accused was one of several persons accused of murder. He accepted a tender of pardon made to him by the committing

Pardon (*contd.*)—
Magistrate on the conditions set out in s. 337 of the Criminal Procedure Code. He was examined as a witness for the Crown before the committing Magistrate, and he made a full and true disclosure of the whole of the circumstances within his knowledge relating to such offence. He repeated them in his examination-in-chief before the Sessions Judge, but resiled from his statements in cross-examination At the conclusion of the trial, in which the accomplices were convicted of murder, the Sessions Judge sent the pardoned accomplice in custody to the committing Magistrate with an order directing that he should be committed for trial for the same murder. The Magistrate accordingly withdrew the pardon and committed the accused to the Sessions Court to take his trial for the murder aforesaid. The Sessions Judge convicted the accused of murder on what was described as his plea of "guilty" and sentenced him to transportation for life. On appeal, *held*, by ASTON, *J.*, that the Sessions Judge had no authority under the Code of Criminal Procedure to order the accused to be committed for trial for the murder in respect of which a pardon had been tendered; and, further, that the accused's trial was conducted with material irregularity which seriously prejudiced the accused and occasioned a failure of justice. *Held*, by BEAMAN, *J.*, that the Sessions Judge, who presided at the first trial had no power to make the order purporting to have been under s. 339 of the Criminal Procedure Code, directing the commitment of the accused on the ground that he had forfeited his pardon; and that the procedure adopted was both wrong and illegal. *Per* ASTON, *J.*—It is open to a pardoned accomplice, if placed on trial as an accomplice who has *forfeited* the pardon already accepted by him, to plead in bar of trial that he did comply with the condition on which the tender of pardon was made and such plea in bar of trial would have to be gone into and decided before the accused is called on to enter his plea in defence to the charge of having committed the offence in respect of which the pardon was tendered. S. 339 of the Criminal Procedure Code does not enact that a person who has accepted a tender of pardon, renders himself liable to be tried for the offence in respect of which pardon was tendered, if he gives false evidence; what the section says is that he renders himself so liable (or forfeits the pardon) if by giving false evidence he has not complied with the condition on which the tender was made *Per* BEAMAN, *J.*:—At the termination of the trial in which the pardon was given, the accomplice must be discharged by the Court. Then if so advised, the Crown may re-arrest and proceed against

Pardon (*contd.*)—
him for the offence in respect of which he was given a conditional pardon. When put upon his trial for that offence, he may plead to a competent Court his pardon, in bar. And that is a plea that the Court would be bound to hear and decide upon before going further and putting him on his defence. In deciding it, the Court would have to raise the issues whether he had or had not complied with the conditions of the pardon, whether he had or had not made a full and true disclosure of the whole facts, and whether after having admittedly done that he had at a later stage recanted, and that recantation amounted to giving false evidence within the meaning of s. 339 of the Criminal Procedure Code, and worked a forfeiture of the pardon.—EMPEROR *v.* KOTHIA, I. L. R., 30 Bom 611.

5 PARDON—*Power of local Government to tender conditional pardon—Withdrawal of prosecution—Accomplice's evidence—Criminal Procedure Code (Act V. of 1898), ss. 30, 494.*] A Local Government in India has no power to tender a conditional pardon to an accomplice for the purpose of his being examined as a competent witness against others, accused with him. An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath: the prosecution must be withdrawn and the accused discharged under s. 494 Criminal Procedure Code, before he would become a competent witness. But if the Court, purporting to act under s. 494, Criminal Procedure Code, sanctions the withdrawal of the prosecution, but omits to record an order of discharge and the accused continues to be kept in custody, his position is in no way changed from that of an accused. The utmost caution is necessary in admitting or using the evidence of an approver. It not only requires corroboration in material particulars for its use, but its evidentiary value depends considerably upon the circumstances under which its evidence is tendered. *Reg* v. *Hanumanta*, (I. L. R., 1 Bom 610) *Empress of India* v. *Ashgar Ali*, (I. L. R., 11 All. 260), *Queen-Empress* v. *Mona Pana*, (I. L. R., 16 Bom. 661); *Empress* v. *Durant*, (I. L. R., 23 Bom. 213), *Winsor* v. *Queen*, (L. R. 1 Q. B. 289), *Queen* v. *Payne* L R., 1 C. C. R. 349), *Queen* v. *Behary Lall*, (7 W. R. 44), *Mohesh* v. *Mohesh*, 10 C. L. R. 553), *Queen-Empress* v. *Trebeni Sahoi*, (I L. R., 90 All. 426), *Reg* v. *Remedios*, (3 Bom. H. C. 59), *R.* v. *Rudd*, (Cowp. 331) and *Paban Singh* v. *Emperor*, (10 C. W. N. 847), referred to.—BANU SINGH *v.* EMPEROR, I. L. R., 33 Cal. 1353; 10 C. W. V. 962.

6. PARDON—*Criminal Procedure Code, ss. 337, 339—Revocation of Pardon—Com-*

Pardon (*contd.*)—

mitment.] After the evidence for the prosecution had been gone into and the accused had an opportunity of cross-examining the witnesses, he was tendered a pardon on condition of his making a full and true disclosure of the whole of the circumstances, within his knowledge, relating to the offence. The accused accepted the pardon but refused to make a statement saying that he knew nothing. The Magistrate revoked the pardon and finally committed him to the Court of Sessions. *Held* that there was no illegality in the Magistrate's procedure.—KING-EMPEROR *v.* BUDHAN, 3 A. L. J. 615.

Partnership property, Dispute Relating to the management of—

PARTNERSHIP PROPERTY, DISPUTE RELATING TO THE MANAGEMENT OF—*Criminal Procedure Code (Act V. of 1898). s. 145—Possession as managing-partner.*] A dispute between partners claiming exclusive possession of the partnership property as managers, is outside the purview of s. 145 of the Criminal Procedure Code.—RADHA RAMAN GHOSE *v.* BALIRAM RAM, I. L. R., 32 Cal. 249.

Penal Code—

1. PENAL CODE—*(Act XLV. of 1860), ss. 21, 186—Public Servant—Obstruction to a public servant—Clerk in the cess-collection department of a District Municipality—Bombay District Municipal Act (Bom. Act III. of 1901).*] A clerk in the cess-collection department of a District Municipality constituted under the Bombay District Municipal Act (Bom. Act III. of 1901), is a public servant within the meaning of section 21, clause 10 of the Indian Penal Code (Act XLV. of 1860); and any obstruction offered to him in execution of his duties is an offence punishable under section 186 of the Code.—EMPEROR *v.* BABULAL, I. L. R. 33 Bom. 213.

2. PENAL CODE—*(Act XLV. of 1860), ss. 34, 109, 467—Forgery—Abetment of forgery—Abetment by conspiracy—Conspiracy at Cambay, foreign territory—Consequent forgery committed in British India—Trial in British India of the foreigner who conspired to forge at Cambay and who was in Cambay when the forgery was committed in British India—Jurisdiction.*] The accused was a subject of the Cambay State. He lived there and traded with his business partner A. He conspired with A at Cambay and sent A to a professional forger at Umreth (a place in British India) with instructions to instigate the latter to forge a valuable security. To facilitate the forgery, the accused sent his *khata* book with A. In pursuance of A's instigation the forgery

Penal Code (*contd.*)—

was committed at Umreth. On these facts, the accused was charged, in a Court in British India, with the offence of abetment of forgery under sections 467 and 109 of the Indian Penal Code. The trying Judge referred to the High Court the question whether the accused, not being a British subject, was amenable to the jurisdiction of his Court:—*Held*, that the Court in British India had jurisdiction to try the accused, for the accused's offence was not wholly completed within Cambay limits, but having been initiated there, was continued and completed within the British territory of Umreth. Where a foreigner starts the train of his crime in foreign territory, and perfects and completes his offence within British limits he is triable by the British Court when found within its jurisdiction. Section 34 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a conspirator to the jurisdiction of a Court though he conspires at a place beyond the jurisdiction. — EMPEROR *v.* CHHOTALAL BABAR, I. L. R., 36 Bom. 524.

2A. PENAL CODE—*(Act XLV. of 1860), ss. 71, 147, 149, 325.*] *See* CRIMINAL PROCEDURE 12

3. PENAL CODE—*(Act XLV. of 1860) s. 76—Act I. of 1872 (Indian Evidence Act) section 105—Question whether act done by accused falls within general exceptions—Evidence — Presumption — Pleadings.*] Where an accused person has raised pleas inconsistent with a defence which would bring his case within one of the general exceptions in the Indian Penal Code, he cannot, in appeal, set up a case, based upon the evidence taken at his trial, that his act came within such general exception. Circumstances which would bring the case of an accused person within any of the general exceptions in the Indian Penal Code can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record; but there must be evidence upon which such circumstances can be found to exist, and when they are not shown to exist, the court is not competent to assume, more particularly when the pleas taken are inconsistent with such assumption, that such circumstances might have existed or that doubt may arise in consequence of such assumption, and the accused ought to be given the benefit of the doubt. *Queen-Empress* v. *Timmal*, I. L. R., 21 All., 122, referred to.—EMPEROR *v.* WAJID HUSAIN, I. L. R., 32 All. 451

4. PENAL CODE—*(Act XLV. of 1860) ss. 99, 147, 323.* *See* RIOTING.

Penal Code (*contd.*)—

5. PENAL CODE—(*Act XLV. of 1860*)—*Right of private defence of body—Extent of right.*] The view that a person should not exercise his right of self-defence if by running away he can avoid injury from his assailant, places a greater restriction on the right of private defence of the body than the law requires. The extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger.—ALINGAL KUNHINAYAN *v.* EMPEROR, I. L. R., 28 Mad. 454.

6. PENAL CODE—(*Act XLV. of 1860*), *ss. 107, 108, 121, 124A—Abetment—Sedition—Waging of war.*] The accused published a book containing eighteen poems, of which four were the subject-matter of the charge. The general trend of the poems charged, as well the remaining ones in the book evinced a spirit of blood-thirstiness and murderous eagerness directed against the Government, conveyed the urgency of taking up the sword, and made an appeal of blood-thirsty incitement to the people to take up the sword, form secret societies and adopt guerilla warfare for the purpose of rooting out the British rule. *Held*, that the accused committed the offence of abetting the waging of war (s. 121 of the Indian Penal Code), by the publication of the poems charged. *Held*, further, that the Court was entitled to look into the poems other than those forming the subject-matter of the charge, for the purpose of finding out the intention of the writer and the design of the publication. *Per* CHANDAVARKAR, *J.*:—Under the Indian Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by s. 121: that is, the abetting of waging of war is under the Code as much an offence of treason as the waging of war itself. The word "abetment" is defined in s. 107 of the Code and one of its meanings, as given there, is "instigating any person to do anything." This meaning is not excluded by anything that occurs in s. 121. The general law is laid down in ss. 107—120 of the Code. According to it, "to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused." This applies to the abetment of the waging of war against the King as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that, while under the general law as to abetment a distinction is made for the purposes of punishment between abetment which has succeeded and abetment which has failed, s. 121 does away with that distinction so far as the offence of waging war is concerned, and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever. And that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its very first appearance and nipped in the bud with a strong hand. *Per* HEATON, *J.*:—Under s. 107 of the Indian Penal Code there may be an instigation of an unknown person. The word "abet" as used in s. 121 of the Code, has the same meaning as is given to it by s. 107. The "abetment" meant by s. 121 is not necessarily confined to abetment of some war in progress. There may be and usually is instigation of rebellion before rebellion actually begins: that kind of instigation is under the Code abetting waging war against the King. So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war.—EMPEROR *v.* GANESH DAMODAR SAVARKAR, I. L. R., 34 Bom. 394.

7. PENAL CODE—(*Act XLV. of 1860*), *ss. 124A and 153A.*] *See* CRIMINAL PROCEDURE CODE 103.

8. PENAL CODE—(*Act XLV. of 1860*), *s. 124A—Press Act* (*XXV. of 1867*), *ss. 4 and 5—Declaration made by owner who took no part in managing a printing press—Publication of a seditious book at the press—Sedition—Intention.*] The accused made a declaration under Act XXV. of 1867, s. 4, that he was the owner of a press called "The Atmaram Press." Beyond this, he took no part in the management of the press, which was carried on by another person. A book styled "Ek Shloki Gita" was printed at this press. It was a book that dealt to a large extent with metaphysics, philosophy and religion. It also contained seditious passages scattered among discussions of religious matters. It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was convicted of the offence punishable under s. 124A of the Indian Penal Code, 1860, as publisher of the book. On appeal, *Held* by CHANDAVARKAR, *J.*, that the cumulative effect of the

Penal Code (*contd.*)—

surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, a reasonable doubt arose as to the guilt of the accused, the benefit of which should be given to him. *Held* by HEATON, *J.*, that before the accused could be convicted under s. 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection; and that the evidence fell very short of proving the intention. *Per* CHANDAVARKAR, *J.*:—A declaration made under s. 4 of the Press Act is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on a person declaring in respect of matters where public interests are involved. Hence where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive; it is not one of law, but of fact, and it is open to the accused to rebut it. — EMPEROR *v.* SHANKAR SHRIKRISHNA DEV, I. L. R., 35 Bom. 55.

9. PENAL CODE—*Act XLV. of 1860, s. 124A—Declaration under Act XXV. of 1867, presumptive evidence of liability as printer and publisher—Criminal liability of proprietor—newspaper — Authority of proprietor to publish, proof of—Section 14 of the Evidence Act.*] A person, making a statutory declaration under Act XXV. of 1867, that he is the printer and publisher of a newspaper is presumably liable as such printer or publisher but may rebut such presumption. *Ramaswami* v. *Loganatha*, [I. L. R., 9 Mad., 387 at p. 390]. The liability of a proprietor is not governed by the Act and depends upon different considerations. The ground of liability in his case is that he authorised the publication of the incriminating article. The authority may be established by direct proof or as a reasonable inference from all the facts of the case. Under s. 14 of the Evidence Act, it is open to the Court to presume that the proprietor, having the control of the paper, authorises the publication of the matter which appears in it. Such a presumption may be improper in the case of a large paper, with a separate editor responsible for the selection and publication of the literary matter; but in the case of a petty

Penal Code (*contd.*)—

paper, with no responsible editor and published under the eye of the proprietor, the presumption might be reasonable though it would be open to him to rebut such presumption, by showing that the publication was in fact not authorised by him. Though no authority to publish libellous matter may have been originally given, such authority may be inferred from the conduct of the parties, such as the publication of other libellous matter without any remonstrance or interference from the proprietor when it has come to his knowledge. Other issues of the same paper containing libellous matter are relevant as evidence to prove such authority. Mere absence of the proprietor at the time of the publication of the libel will not rebut such presumption if during such absence he exercises complete control over the paper. The English law on the subject discussed. *Queen* v. *Holbrook*, (4 Q.B.D., 42), referred to. — HARISARVOTHAMA RAO, *v.* KING-EMPEROR, I. L. R., 32 Mad. 338.

10. PENAL CODE—*(Act XLV. of 1860), ss. 124A; 153A — Sedition — Promoting enmity, &c., between classes—Publication, what constitutes—Criminal Procedure Code (Act V. of 1898), ss. 225, 233, 234, 235, 236 and 237—Charges — Joinder of charges—Misjoinder of charges.*] The accused was charged at one trial with having committed offences punishable under ss 124A and 153A of the Indian Penal Code on two charges, one with respect to each of the two articles he published on different dates in his newspaper called the *Hind Swarajya*. At the trial there was no other evidence of the publication of the newspaper in Bombay except the declaration made by the accused under the Press Act, and the depositions of witnesses who received the newspaper in Bombay as Government servants in their capacity as such. The accused was convicted on both the charges and sentenced separately on each of them. It was contended in appeal that there was no evidence of the publication of the newspaper in Bombay, and that there was a misjoinder of charges vitiating the trial. *Held*, that the evidence on record was sufficient to prove the publication of the newspaper in Bombay. *Held*, further, that the trial was not bad as there had been no misjoinder of charges.—EMPEROR *v.* TRIBHOVANDAS I. L. R., 33 Bom. 77.

11. PENAL CODE—*Act XLV. of 1860, s. 124A—Criminal Procedure Code, ss. 225 and 537—Actual words used, need not be stated in charge or proved in prosecution under s. 124A of the Indian Penal Code—Evidence Act, ss. 159 and 160—Relevancy*

Penal Code (*contd.*)—

of notes of speeches.] *Held per* BENSON *and* WALLIS, *JJ.*—The gist of an offence under s. 124A of the Indian Penal Code, is the bringing or attempting to bring into hatred or contempt or the exciting or attempting to excite disaffection towards His Majesty, etc. If an offence under s. 124A is committed by words spoken, the requirements of the law are satisfied if the charge gives such a description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is charged, *i.e.*, if the charge states the words used with substantial, though not absolute, accuracy; and it is enough if the substance of the words proved to have been used, is the same as that of the words set out in the charge. Even if the words or the substance of the words used, are not entered at all in the charge, this will be only an irregularity which, under s 225 of the Code of Criminal Procedure, will not vitiate a conviction unless such omission has misled the accused and occasioned a failure of justice. *Chithambaram Pillai v. Emperor*, (I. L. R., 32 Mad 37), Preferred to. *Per* SANKARAN NAIR, *J.*—Where a person is charged under s. 124 (A) with exciting disaffection or bringing His Majesty into hatred or contempt, the exciting of disaffection and not the utterance of seditious words, is the gist of the offence and the charge need not set out the words, nor need the words themselves be proved. It is, however, quite different where the person is charged with *attempting* to excite disaffection. Attempt implies intention, and a man's intention must be gathered from the words used by him and not from what others rightly or wrongly understood him to mean. In such cases the words themselves are the gist of the offence and they ought to be set out in the charge; and whether set out or not must be proved. Where the words, though not actually in the charge, are indicated with sufficient certainty and the accused knows the words for which he is tried, the defect in the charge can be cured under s 225 or 537 of the Code of Criminal Procedure. What ought to be contained in a charge is a different question from what ought to be proved to secure a conviction; and although the omission to state the exact words may not vitiate the charge, the words themselves must be proved to convict a person for attempting to excite disaffection. Where a person records, not the actual words used, but simply notes of the impression made on his mind by a speech, such notes are inadmissible under s. 160 of the Evidence Act to prove the actual words used.—MYLAPORE KRISHNASAMI *v.* EMPEROR, I. L. R., 32 Mad. 384.

Penal Code (*contd.*)—

12. PENAL CODE—*Act* (*XLV. of 1860*), *s. 149—Existence of common object before commencement of fight not necessary to constitute offence—Criminal Procedure Code, ss. 237, 238, 423 (b)—Appellate Court has power to convict accused of an offence of which he is acquitted in cases not falling under ss. 237, 238.*] To constitute an offence under s. 149 the existence of a common object before the commencement of the fight is not necessary. It is enough if the common object is adopted by all the accused. The power of an Appellate Court under s. 423 (*b*) of the Criminal Procedure Code to alter the finding while maintaining the sentence is not confined to cases falling under ss. 237 and 238 of the Code. The finding which an Appellate Court may alter under s. 423 (*b*) may relate either to an offence with which the accused is apparently charged in the lower Court or to one of which he might be convicted under ss. 237 and 238 without a distinct charge In cases not falling under ss. 237 and 238, he cannot be convicted of an offence with which he was not charged in the lower Court. Where however he has been charged and the lower Court has recorded a finding on such charge, the Appellate Court can alter the finding.—GOLLA HANUMAPPA *v.* EMPEROR, I. L. R., 35 Mad. 243.

13. PENAL CODE—*Act* (*XLV. of 1860*), *s. 161—Bribe—"In the exercise of official functions"—"Motive or reward"—Essentials of the offence.*] S. 161 of the Indian Penal Code (Act XLV. of 1860) requires proof that an official has obtained, as a motive or reward for official conduct, an illegal gratification for himself or another. That other may or may not be an official, and therefore may be wholly unconnected with the official conduct. The conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it. This is clear from the phrase "in the exercise of *his* official functions." To obtain a bribe as a motive or reward for another's conduct does not fall within the section though it may be an abetment of that offence or cheating. The performance of the act which is consideration for the bribe is not essential. But it is essential that the bribe should be obtained 'as a motive or reward." That phrase evidently means on the understanding that the bribe is given in consideration of some official act or conduct. Such an understanding need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances.—EMPEROR *v.* BHAGWANDAS, I. L. R., 31 Bom. 335.

14. PENAL CODE—(*Act XLV. of 1860*), *ss. 182, 211 — False information — False*

Penal Code (*contd.*)—

charge— Distinction between the two offences.] The accused sent a telegram to the Collector of Ratnagiri, in his capacity of the Head of the Municipality at Vengurla to the effect that: "Head Master, English School (Vengurla), misappropriated Rs. 168 of fees since October. Please investigate yourself soon." For this, the accused was convicted under s. 182 of the Indian Penal Code (Act XLV. of 1860) on the grounds that he had no probable cause for making the assertion contained in the telegram, and that he probably knew that a peon had confessed that he was guilty of the misappropriation. *Held*, that on these facts the charge under s. 182 of the Code could not be legally sustained. The offence made punishable by s. 182 of the Indian Penal Code is a distinct offence from that described in s. 211 of the Code, which relates to an attempt to put the Criminal Courts in motion against another person. The action which s. 211 renders penal is action entailing very serious consequences, and therefore the more serious consideration is required on the part of the individual who takes it. It is sufficient in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in s. 182. To bring a case within that section, it is necessary for the prosecution to prove, not merely absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given. — EMPEROR *v.* RAMCHANDRA, I. L. R., 31 Bom. 204.

15. PENAL CODE—(*Act XLV. of 1860*), *ss. 182, 211—Sanction to prosecute—Criminal Procedure Code, s. 195.*] H made a report against several persons, including one S, at a police station, charging them with rioting and voluntarily causing hurt. The police made inquiry and sent up several persons for trial but not S. Some of these were convicted by the Magistrate, but acquitted by the Sessions Judge. Thereupon S made a complaint to the Magistrate, charging H with having made a false report in respect of himself to the police. The Magistrate took cognizance of the complaint. *Held* that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction.—EMPEROR *v.* HARDWAR PAL, I. L. R., 34 All. 522.

16. PENAL CODE—(*Act XLV. of 1860*), *s. 182—Transfer - Unfounded allegations against the trying Magistrate made by an accused person in an application for transfer of his case.*] *Held* that an accused person, who in support of an application for the transfer of the case against him to some other Magistrate makes unfounded and defamatory allegations against the trying Magistrate, cannot be prosecuted in respect of such allegations under s. 182 of the Indian Penal Code. *Queen* v. *Duria Khan*, 2 N. W. P., H. C. Rep., 128, and *Queen-Empress* v *Subbayya*, I L. R., 12 Mad. 451, referred to.—EMPEROR *v.* MATAN, I. L. R., 33 All. 163.

17. PENAL CODE—*(Act XLV. of 1860), s. 182—Criminal Procedure Code, (Act V. of 1898), ss. 154, 162—False information to a Village Magistrate.*] An offence under section 182 of the Penal Code is committed by a person giving false information to a Village Magistrate charging another with having committed an offence. Where such information is given with the view of its being passed on to the Station-house Officer, who, on receiving the information, takes a complaint in writing from such informant, the complaint is one taken under section 154 and not under section 162 of the Criminal Procedure Code. *The Queen* v. *Perriannan* and *The Queen* v. *Naraina* (I. L. R., 4 Mad., 241), distinguished.—EMPEROR *v.* JANNALAGADDA VENKATRAYUDU, I. L. R., 28 Mad., 565.

18. PENAL CODE—(*Act XLV. of 1860*) *s. 186—Voluntarily obstructing Public Servants in the discharge of their public functions—Releasing property attached by Civil Court peons under distress warrants issued under the Public Demands Recovery Act (Beng. I. of 1895) and the Village Chaukidari Act (Beng. VI. of 1870) s. 45—Legality of Warrant—Omission to specify date of extension on the face of it—Civil Procedure Code (Act V. of 1908) order XXI. rule 24 (2)—Execution by person not named in the warrant—Delegation of powers by Nazir.*] A distress warrant issued under the Public Demands Recovery Act which has been extended beyond the original date of return, but does not bear on the face of it the altered date, is not a legal warrant under order XXI. rule 24 (2) of the Civil Procedure Code. A warrant under s. 45 of of the Village Chaukidari Act must contain the name of the person charged with the execution thereof and cannot be legally executed by any other person delegated by the former for that purpose. Where the accused released certain buffaloes attached by the Civil Court peons, on the 2nd August, under two warrants addressed to the nazir, but endorsed by him to them, the one issued under the Public Demands Recovery Act, which was originally return-

Penal Code (*contd.*)—

able by the 26th July but had been extended to the 8th August, without the alteration of the date appearing thereon, and the other under s. 45 of the Village Chaukidari Act directed to the nazir but without naming any person therein as charged with the execution of it:—*Held*, that they were not guilty of an offence under s. 186 of the Penal Code, as the peons were not lawfully executing the warrants.—SHEIK NASUR *v.* EMPEROR, I. L. R. 37 Cal. 122.

19. PENAL CODE—*(Act XLV. of 1860) s. 186—Act VIII. of 1873 (Northern India Canal and Drainage Act) sections 45 and 47—Mode of collection of canal dues—Distraint.*] Where under a written order signed by a Tahsildar the Naib Nazir was directed to realize certain canal dues, and he, on attempting to do so by attachment and sale of the defaulter's property, was resisted by the owners of the property, it was *held* that the conviction of the persons offering resistance under section 186 of the Indian Penal Code was good. The Tahsildar's order, though not of a formal nature, was sufficient evidence that the Naib Nazir was acting as a public servant in the discharge of his duty. *Held* also that the appointment of lambardars does not preclude the Revenue authorities, if they think fit, from realizing canal dues from the persons by whom the dues are actually payable. *Queen-Empress* v. *Poomalai Udayan*, I. L. R., 21 Mad. 296, referred to.—EMPEROR *v.* ABDULLAH, I. L. R., 27 All. 499.

20. PENAL CODE—*(Act XLV. of 1860,) s. 193—Giving false evidence—Deposition of witness upon which assignment of perjury is based not taken in manner required by law—Conviction—Unsustainability of.*] A was convicted of giving false evidence in a judicial proceeding. It was proved that after his evidence had been recorded, his deposition upon which the assignments of perjury were based was read over to him by the Court clerk, in a place where neither the Judge nor vakils were present:—*Held*, that the conviction could not be sustained. The deposition upon which the prosecution was based not being properly taken in accordance with law, should not have been admitted in evidence.—KAMATCHI NATHAN CHETTY *v.* EMPEROR, I. L. R., 28 Mad. 308.

20A. PENAL CODE—*(Act XLV. of 1860), ss. 193*—*See* CRIMINAL PROCEDURE CODE 56.

21. PENAL CODE—*(Act XLV. of 1860), s. 211 Preferring a false charge—"Charge" made to Village Magistrate — Sustainability.*] An accusation of murder made to a Village Magistrate (who, under section 13 of Regulation XI. of 1816, has authority to arrest any person whom he suspects of having committed the murder of a person whose body is found within his jurisdiction) is a "charge" within the meaning of section 211 of the Indian Penal Code, even though it does not amount to the institution of criminal proceedings and even though no criminal proceedings follow it owing to the police referring it as false on investigation.—CHENNA MALLI GOWDA v. EMPEROR, I. L. R., 27 Mad. 129.

22. PENAL CODE—*(Act XLV. of 1860), s. 211 — Preferring false charge — Statement not reduced to writing by Police officer.*] A person was convicted, under section 211 of the Indian Penal Code, of having preferred a false charge. It appeared that the accused had stated to a Police officer that certain of the prosecution witnesses had stolen his goats, and that he had made this statement intending to set the criminal law in motion against those persons. The statement had not been reduced to writing in accordance with the requirements of section 154 of the Code of Criminal Procedure. On its being contended that there was no evidence of a false charge, within the meaning of section 211:—*Held*, (1) that the test is—did the person who makes the charge intend to set the criminal law in motion against the person against whom the charge is made; (2) that (it being clear from the evidence that the accused did so intend) the fact that the statement made by the accused to the Police officer had not been reduced to writing in accordance with section 154 of the Code of Criminal Procedure did not prevent the statement made from being a false charge within the meaning of that section.—MALLAPPA REDDI *v.* EMPEROR, I. L. R., 27 Mad. 127.

23. PENAL CODE—*(Act XLV. of 1860) ss. 193, 210—Criminal Procedure Code (Act V. of 1898) ss. 195, 476—Sanction to prosecute—Refusal by Subordinate Judge—District Judge on appeal may institute proceedings under s. 476—Court—Interpretation.*] An application was made to a Subordinate Judge for sanction to prosecute *L* for offences punishable under ss. 193 and 210 of the Indian Penal Code (Act XLV. of 1860). The Subordinate Judge refused to grant the sanction. On appeal, the District Judge varied the order and directed the lower Court to prosecute *L* for an offence under s. 210 of the Indian Penal Code. *Held*, that the District Judge had jurisdiction to pass an order under s. 476 of the Criminal Procedure Code (Act V. of 1898); that it was not competent to him to direct the Subordinate Judge to prosecute *L* for an offence under s. 210 of the Indian Penal

Penal Code (*contd.*)—

Code and that he should himself have proceeded according to clause (*b*) of s. 195 read with s. 476 of the Criminal Procedure Code.—IN RE LAKSHMIDAS LALJI, 32 Bom. 184.

24. PENAL CODE—(*Act XLV. of 1860,*) *s. 211—False charge must be to one having authority to set criminal law in motion—Criminal Procedure Code, s. 162—Statement made under cannot be the basis of prosecution for false charge.*] A statement made under s. 162 of the Code of Criminal Procedure in answer to questions put by a police officer making an investigation under s. 161 of the Code of Criminal Procedure cannot be made the basis of a prosecution under s. 211 of the Indian Penal Code. Information of an alleged dacoity was given to a Village Munsif who sent a report to the police. The police thereupon investigated the case and rejected it as false. The informant was prosecuted under s. 211 of the Penal Code :—*Held*, that there was no institution of criminal proceedings by the informant, as the Village Munsif had no power to investigate in cases of dacoity. The informant had made no 'false charge' within the meaning of s. 211 as it was not made to one having power to investigate and send up for trial. The subsequent investigation was not the result of the information given but of the report sent by the Village Munsif. *Karim Buksh* v. *Queen-Empress*, (I. L. R , 17 Cal. 574), followed.—CHINNA RAMANA GOWD *v.* EMPEROR, I. L. R., 31 Mad. 506.

25. PENAL CODE—(*Act XLV. of 1860*) *s. 211—Complaint to Village Magistrate is a charge and an institution of criminal proceedings within the meaning of s. 211, Indian Penal Code, if it is his duty to forward such complaint for action by the Police—Criminal Procedure Code, ss. 45, 154, 161 and 162.*] On the question raised by a reference from the Sessions Judge whether a person giving false information about an alleged offence to a Village Magistrate can be prosecuted for an offence under s. 211 of the Indian Penal Code :—*Held, per* BENSON AND MUNRO, *JJ.* (SANKARAN-NAIR, *J.*, dissenting), that a false complaint to a Village Magistrate of an offence, when the information is one which under s. 45 of the Code of Criminal Procedure, the Village Magistrate is bound to pass on to the higher constituted authorities, will amount to an offence under s. 211 of the Indian Penal Code. The words "false charge" in s. 211 must not be understood in a technical or restricted sense, but in its ordinary meaning of a false accusation made to any authority bound by law to investigate it or to take any steps in regard to it, such as giving information of it to superior authorities; and institution of criminal proceedings includes the setting of the criminal law in motion. The complaint to the Village Magistrate, in such a case, amounts to a "charge" and is also an institution of criminal proceedings within s. 211 of the Code of Criminal Procedure. It would be otherwise, if the offence complained of is one in regard to which the information need not, under s. 45 of the Code of Criminal Procedure, be passed to the higher authorities. *Ramana Gowd* v. *Emperor*, (I. L. R , 31 Mad 506,) dissented from. *Obiter :* The taking of a complaint to any of the other persons who, under s. 45 of the Code of Criminal Procedure, are bound to pass such information to higher authorities, may also fall within s. 211, Indian Penal Code. *Per* SANKARAN-NAIR, *J.*—Where information of an offence, "given to a Village Magistrate," is forwarded by him to a Police Officer and the latter takes a written statement from the person giving such information, such statement is not one taken under s. 154 but under ss. 161 and 162 of the Code of Criminal Procedure. It is not a complaint but a statement by a witness in an investigation under s. 157 and no charge under s. 211, Indian Penal Code, can be founded on such statement. To constitute a "false charge," it must be made to a Court or officer, who has powers to investigate and send up for trial. S. 45 of the Code of Criminal Procedure imposes the duty of forwarding information to superior authorities on a number of persons other than Village Magistrates and the Legislature could not have intended to constitute all such persons authorities before whom criminal preceedings may be instituted. S. 45 does not impose the duty of reporting in the case of bailable offences and if the duty to report is taken as the determining test, it will follow that the information is to be considered as a proceeding in some cases and in others not.—THE SESSIONS JUDGE OF TINNEVELLY DIVISION *v.* SHIBAN CHETTI, 32 Mad. 258.

26. PENAL CODE—(*Act XLV. of 1860*) *s. 223—Criminal Procedure Code, s. 54—Escape from lawful custody—Chaukidar.*] The police of an adjoining Native State arrested in British territory one Paran Singh suspected of having committed an offence in the Native State, and made him over to one Debi a chaukidar, from whose custody he escaped. *Held* that neither the original arrest nor the subsequent custody by the chaukidar were lawful, and therefore that the chaukidar could not properly be convicted under s. 223 of the Indian Penal

Penal Code (*contd.*)—

Code. *Empress of India* v. *Kallu*, I. L. R., 3 All. 60, *Kalai* v *Kalu Chowkidar*, I. L. R., 27 Cal. 365, and *King-Emperor* v. *Johri*, I. L. R., 23 All. 266, referred to.—EMPEROR *v.* DEBI, I. L. R., 29 All. 377.

27. PENAL CODE—(*Act XLV. of 1860*) *s. 225—Criminal Procedure Code, ss. 59 and 60—Rescue from lawful custody—Definition.*] A private person lawfully arrested a thief in the act of committing theft and made him over to a village chaukidar to be taken to the nearest police station. On the way to the police station three persons seized the chaukidar, and the thief made his escape. *Held* that the rescuers were rightly convicted under s. 225 of the Indian Penal Code. The arrest of the thief having been in the first instance lawful, the requirements of section 39 of the Code of Criminal Procedure were sufficiently complied with by the person arresting sending him to the police station in the custody of the chaukidar. *Queen-Empress* v. *Potadu* (I. L. R., 29 Cal. 33) followed. *King-Emperor* v. *Johri* (I. L. R., 11 Mad. 480) referred to.—EMPEROR *v.* PARSIDDHAN SINGH, I. L. R., 29 All. 575.

28. PENAL CODE—(*Act XLV. of 1860*) *ss. 225B, 353—Rescue from lawful custody—Legality of warrant—Civil Procedure Code, s. 82, 174.*] An Assistant Collector issued wrrrants for the arrest of certain witnesses, for whose atttendance summonses had been issued, but who had not appeared in obedience thereto. The serving officer had not been able to effect personal service of the summonses, but had affixed copies to the houses of the persons to be served. The Court previous to issuing warrants did not comply with the provisions of s. 82 of the Code of Civil Procedure, though it was apparently of opinion that there had been due service of the summonses. The officers charged with the execution of the warrants arrested one of the witnesses, but they were attacked by N and others, and the man they had arrested was rescued. N. was convicted under ss. 225B and 353 of the Indian Penal Code. *Held* that even if s. 225B was not applicable, the conviction under s. 353 of the Code was perfectly justified. —EMPEROR *v.* NARBADESHWAR I. L. R., 27 All. 491.

29. PENAL CODE—(*Act XLV. of 1860*) *s. 225B—Escape from lawful custody—Defaulting co-sharer arrested under warrant of Tahsildar—Rules of Board of Revenue, rule 9, clause (2)—Act (Local) III. of 1901 (United Provinces Land Revenue Act), ss. 142, 143, 146.*] Where a Tahasildar issued a warrant under s. 146 of the United Provinces Land Revenue

Penal Code (*contd.*)—

Act against certain defaulting co-sharers, and they were arrested, but subsequently escaped from detention; *held* that this was an escape from lawful custody within the meaning of s 225B of the Indian Penal Code. The Tahsildar's warrant was not illegal because the Board had directed that process should 'ordinarily' issue in the first instance against the lambardar.—EMPEROR *v.* GULAB SINGH, I. L. R., 32 All. 116.

30. PENAL CODE—(*Act XLV. of 1860*), *s. 225B—Offence under section committed when a prisoner escapes while the peon having custody of him is asleep.*] A man legally arrested for an offence must submit to be tried and dealt with according to law. A prisoner who escapes, after he is arrested and before he is delivered by due course of law, owing to the neglect or consent of the person having him in custody, is guilty of an offence under s. 225B of the Penal Code. *Queen-Empress* v. *Muppan* (I. L. R., 18 Mad. 401) followed.—THE PUBLIC PROSECUTOR *v.* RAMASWAMI KONAN, I. L. R., 31 Mad. 271.

31. PENAL CODE—(*Act XLV. of 1860*) *ss. 230, 235 and 243—Murshidabad rupees—Duty of subordinate courts to follow decisions of superior courts—Maxim: Stare decisis.*] Murshidabad rupees stand on the same footing as Farrukhabad rupees and fall within illus. *(e)* to s. 230 of the Penal Code, these rupees having been stamped and issued by the authority of the Government of India, or at least of the Government of a Presidency, and issued as money under the authority of the Government of India, as were Farrukhabad rupees. They are therefore "Queen's coin" within the meaning of the section. It is the duty of every subordinate court, where it finds a decision of the High Court to which it is subordinate applicable to a case before it, to follow such decision without question.—EMPEROR *v.* DENI, I. L. R., 28 All. 62.

32. PENAL CODE—(*Act XLV. of 1860*) *ss. 234, 225, 537—Act XLV. of 1860 (Indian Penal Code), s. 477A—Charge—Misjoinder of charges—Illegality.*] Where a person who was sent up for trial under s. 477A of the Indian Penal Code was charged with having wilfully altered and mutilated certain accounts between the years 1907 and 1909, and the evidence showed that the subject-matter of the charge was practically five series of entries in certain sets of books, it was *held* that the charge so framed was bad, and the defect could not be remedied by s. 537 of the Code of Criminal Procedure, *Subrahmania Ayyar* v. *King-Emperor*, I. L. R., 25 Mad. 61 and *Queen-Empress* v. *Mati Lal Lahiri*, I. L. R.,

Penal Code (*contd.*)—

26 Cal. 560, referred to.—EMPEROR *v.* SALIM-ULLA KHAN, I. L. R., 32 All. 57.

33. PENAL CODE—(*Act XLV. of 1860*), *ss. 283, 114—Obstruction in public way—Toy shop on a street—Exhibition of toys in the shop window—Collection of crowd of persons in street—Obstruction.*] The accused, who had a toy shop in a public street, exhibited in the window of the shop overlooking the street certain clockwork toys during a Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys: there were dangerous rushes in consequence, people were knocked down and great obstruction and danger were caused to those using the road. On these facts the accused were convicted of offences punishable under ss. 283 and 114 of the Indian Penal Code. *Held*, upholding the conviction, that there were obstruction, danger and injury to the persons using the public way, which amounted to a public nuisance, and that the efficient cause of the nuisance was the act of the accused. Ordinarily, every shop keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. *Attorney General* v. *Brigton and Hove Co-operative Supply Association*, 1 Ch. 276, followed.—EMPEROR *v.* NOOR MAHOMED, I. L. R., 35 Bom. 368.

34. PENAL CODE—*(Act XLV. of 1860), s. 296—Disturbing a religious assembly—Religious procession on a highway—Carrying of flags to a temple.*] Where certain Lodhas, who, with the sanction of the public authorities, had been carrying flags to a temple in procession through a public street were attacked by persons who objected to the procession: *held*, that such attack constituted a disturbance of the performance of a religious ceremony punishable under s. 296 of the Indian Penal Code.—EMPEROR *v.* MASIT, I. L. R., 34 All. 78.

35. PENAL CODE—(*Act XLV. of 1860*), *ss. 296, 39—Public worship, disturbance of—"Voluntarily," meaning of.*] It is not necessary for the purpose of s. 296, Indian Penal Code, that the accused should have an active intention to disturb religious worship. It is sufficient, if knowing they were likely to disturb it by their music they took the risk and did actually cause disturbance. It is an offence under s. 296, Indian Penal Code, to pass a mosque with music so as to disturb religious worship carried on during hours notified therefor. S. 79, Penal Code, cannot be pleaded in such a case. *Muthial Chetti* v. *Bapan Saib*, I. L. R., 2 Mad. 140, followed. *Sundaram* v. *The Queen* and *Ponnusawmy* v. *The Queen*, (I. L. R. 6 Mad. 203,) followed.—THE PUBLIC PROSECUTOR *v.* SANKU SEETHIAH, I. L. R., 34 Mad. 92.

Penal Code (*contd.*)—

36. PENAL CODE—*(Act XLV. of 1860), s. 297—Trespass on a burial ground—Ploughing up burial ground—Joint owner.*] Where a person entered upon a grove for the purpose of demarcating his share therein and in doing so dug up certain graves and exposed the bones of the persons buried there in spite of the remonstrances of the relations of the buried persons, *held* he was properly convicted of an offence uuder s. 297 of the Penal Code, and none the less because he happened to be part owner of the grove. *Queen-Empress* v. *Sabhan*, I. L. R., 18 All. 395, referred to.—EMPEROR *v.* RAM PRASAD, I. L. R., 33 All. 773.

37. PENAL CODE—(*Act XLV. of 1860*), *s. 339—Wrongful restraint, what necessary to constitute.*] The accused placed a lock on the outer door of complainant's house intending to prevent and thereby preventing his ingress: *Held*, that the offence of wrongful restraint was established although the accused were not physically present to enforce the obstruction. There is nothing in s. 339, Criminal Procedure Code, which requires the physical presence of the obstructor at the moment of prevention.—ARUMUGAKADAR *v.* EMPEROR, I. L. R., 34 Mad. 547.

38. PENAL CODE—(*Act XLV. of 1860*), *s. 342—Officer arresting and confining judgment-debtor in house of judgment-creditor not guilty of wrongful confinement.*] An officer arresting a judgment-debtor, under a warrant which directs him to produce the judgment-debtor when arrested before the Court with all convenient speed, is not guilty of wrongful confinement if, having effected the arrest when the Court is not sitting, he confines him in the house of the judgment-creditor. His duty is to produce the judgment-debtor at the next sitting of the Court and until he so produces him, he is responsible for his safe custody.—EMPEROR *v.* SAMUEL, I. L. R., 30 Mad. 179.

39. PENAL CODE—(*Act XLV. of 1860*), *ss. 353, 149—Civil Procedure Code (Act XLV. of 1882), s. 251—Criminal force by members of an unlawful assembly to deter public servant from discharge of duty.*] S. 251 of the Code of Civil Procedure requires the Court to specify in a warrant for execution of decree the day on or before which the warrant must be executed. A Commissioner attempting to give possession under a time-expired warrant has no autho-

Penal Code (*contd.*)—

rity to go upon land in the possession of the party, who resists the execution.—ABINASH CHANDRA ADITYA *v.* ANANDA CHANDRA PAL, I. L. R., 31 Cal. 424.

40. PENAL CODE—(*Act XLV. of 1860*), *s. 353—Using criminal force to deter a public servant—Entry by police on premises of suspected person at night — Assault on police.*] A police constable, at midnight, entered upon the premises of a person who was regarded by the police as a suspicious character, and knocked at his door to ascertain if he was there, whereupon he came out and abused and pushed the constable and lifted a stick as if he were about to hit the constable with it. On a complaint being preferred under s. 353 of using criminal force to deter a public servant in the execution of his duty:—*Held*, that the offence had not been committed. The constable was not engaged in the execution of his duty as a public servant and was technically guilty of house trespass, and his action was calculated to cause annoyance to the inmates of the house, and was insulting to the accused, who was justified in causing the slight harm which he had inflicted on the constable. The latter could not be regarded, under s. 99, as acting in good faith under colour of his office as his action was not authorized by any police circular or order.—DORASAMY PILLAI *v.* EMPEROR, I. L. R., 27 Mad. 52.

41. PENAL CODE—(*Act XLV. of 1860*), *ss. 363, 366, 498—Criminal Procedure Code* (*Act V. of 1898*), *ss. 227, 228, 199, 238, 537—Charge—Addition of a charge—Irregularity—Penal Code* (*Act XLV. of 1860*), *ss. 363, 366, 498.*] The accused was tried on charges under ss. 363 (kidnapping from lawful guardianship) and 366, (kidnapping a woman) of the Indian Penal Code (Act XLV. of 1860). At the conclusion of the evidence to establish those charges and after the evidence for the defence had been recorded, the Court added a charge under s. 498 (enticing a married woman) of the Code, notwithstanding the objection by the accused's counsel. The trial ended in conviction of the accused on all the three charges. The accused appealed contending that the procedure adopted was contrary to the provisions of s. 199 of the Criminal Procedure Code and to the spirit of s 238 of the Code:—*Held*, (1) that the procedure adopted in the case was not regular. The additional charge framed at the stage it was framed, notwithstanding the objection by the accused's counsel, was prejudicial to the accused; (2) that the conviction under s. 498 of the Indian Penal Code should be set aside: and further investigation be made into the remaining charges.—EMPEROR *v.* ISAP MAHOMED, 31 Bom. 218.

42. PENAL CODE—(*Act XLV., of 1860*), *s. 366—Kidnapping—Taking out of custody.*] Where two girls under the age of 16 years ran away from their houses and remained for nearly one or two days in the house of a woman, who belonged to the caste of *Naiks* in Kumaun and no report was made to the padhan or the patwari; *held* that the woman in whose house the girls stayed was properly convicted of an offence under s. 366 of the Penal Code.—*Queen* v. *Gunder Singh*, W. R. Cr R. 6, dissented from.—EMPEROR *v.* JASAULI, I. L. R., 34 All. 340.

43. PENAL CODE—(*Act XLV. of 1860*), *s. 379—Theft—Dishonestly quarrying and removing stones from land in possession of another.*] Stones, when quarried and carried away are "things severed from the earth" (within the meaning of s. 378, explanation I. of the Indian Penal Code) and are "moveable property" (within the meaning of s. 22) and as such are capable of being the subject of theft. A person who quarries and carries away stones from land in the possession of another commits theft. *Queen-Empress* v. *Kotayya*, (I. L. R., 10 Mad. 255), dissented from.—VENKATAPPAYYA SASTRI *v.* MADULA VENKANNA, I. L. R., 27 Mad. 531.

44. PENAL CODE—(*Act XLV. of 1860*), *s. 369—Theft — Charge of stealing chanks—Shell-fish taken from beds in sea—Feræ naturæ — "Possession" of complainant — Subject of theft.*] "Chanks" (popularly included among shell-fish, but really large molluscs) are found buried in beds of sand or in the sandy crevices of coral reefs in Palk's Bay, a large bay landlocked by British dominions for eight-ninths of its circumference and containing numerous islands which form part of the districts to which they are adjacent on the shores of India and Ceylon. It was shown by evidence that this bay (as well as parts of the adjacent Gulf of Manaar) had been effectively occupied for centuries by the inhabitants of India and Ceylon, respectively; that the "chanks" found therein had for centuries been the monopoly of the rulers of the country, both in India and Ceylon, and that licenses to gather them had been granted by the sovereign; and that "chank royalty" was one of the heads of revenue on which permanent assessment of an adjacent zamindari was fixed in 1802. Petitioner, who had leased from the Raja of Ramnad the "chank beds" five miles off the coast of his zemindari, charged the counter-petitioners with having committed the offence of theft of "chanks" from these beds. On

Penal Code (*contd.*)—

the defence being raised that "chanks" were fish, and were *feræ naturæ* and that those in question had been taken from beds in the open sea and had therefore not been taken from the possession of the complainant and could not be the subject of theft:—*Held*, that the "chanks" in question were capable of being the subject of theft.—ANNAKUMARU PILLAI *v.* MUTHUPAYAL, 27 Mad. 551.

45. PENAL CODE—*(Act XLV. of 1860), s. 379—Theft—Snatching goods from a person—No intention of depriving the owner of property permanently—Wrongful gain—Wrongful loss.*] In India the offence under s. 379 may be committed even where there is no intention to deprive the owner of the property permanently. *Prosonno Kumar Pater* v *Udoy Sant*, 22 C. 669 relied upon. *R.* v. *Dickinson*, R. 420 not applied. *Queen-Empress* v. *Agha Mahommad Yusuf*, 18 A. 88, referred to. The accused snatched some books from a boy as he was coming out of school and told the boy that he would return the books if he came to his house. The object of the accused was to commit an unnatural offence upon him. *Held*, that the accused committed the the offence of theft under s. 379, Indian Penal Code, because deprivation of property is not a necessary ingredient. *Held*, also that there was wrongful gain to accused and wrongful loss to the school boy within s. 23 of the Act.—NAUSHE ALI KHAN *v.* EMPEROR, I. L. R., 34 All. 91.

46. PENAL CODE—*(Act XLV. of 1860), s. 379—Theft—Dishonest taking—Bona fide claim of ownership by accused over property in possession of third party — Disputed ownership of land—Possession summarily taken by Revenue authorities—Province of Civil Courts to decide questions of ownership between Government and private persons.*] The petitioner was convicted of theft of certain bamboos which he said he cut on his own patta land, but which the prosecution alleged he cut on Government poramboke land adjacent to his own. Prior to his conviction, disputes had arisen between the Revenue authorities and the petitioner regarding the ownership of the land. The petitioner contended that he *bona fide* believed the bamboos to be his property at the time he cut and removed them. The Magistrate, finding that the Revenue authorities had taken possession of the land at the time the bamboos were removed convicted the petitioner:—*Held*, that the conviction was wrong. The questions to be considered were, (1) whether the bamboos did in fact belong to the petitioner or to Government; (2) whether

Penal Code (*contd.*)—

if they did not belong to the petitioner he *bona fide* believed they did. It is the province of the Civil Courts to decide questions of ownership of land between Government and private parties, and if the Revenue authorities take summary possession of land as in the present case, they become mere trespassers and there is nothing dishonest in the owner taking possession of his own property.—ALGARASAWM, TEVAN v. EMPEROR, I. L. R., 28 Mad. 304.

47. PENAL CODE—*(Act XLV. of 1860), s. 400—Criminal Procedure Code, Act V. of 1898, s. 423 (2)—When verdict of jury can be interfered with—Evidence necessary to prove offence under s. 400, Indian Penal Code—Evidence Act I. of 1872, s. 54.*] The Court will not, on appeal, interfere with the verdict of a jury, under section 423 (2) of the Criminal Procedure Code, unless it is satisfied that the verdict is erroneous, and that such error was caused by a misdirection by the Judge or misunderstanding on the part of the jury of the law as laid down by him. In a case under section 400, Indian Penal Code, the prosecution is bound to prove that the accused belonged to a gang, which was consciously associated for the purpose of habitually committing dacoity. The associating and the purpose of the association may be proved by direct evidence or by proof of facts from which they can be reasonably inferred. Evidence of the commission of other offences than dacoity is only evidence of bad character and is inadmissible under section 54 of the Evidence Act. Evidence that the accused or groups of them had been concerned in a large number of dacoities in a comparatively short space of time may be sufficient evidence of such association.—THE PUBLIC PROSECUTOR v. BONIGIRI POTTIGADU, I. L. R., 32 MAD., 179.

48. PENAL CODE—*(Act XLV. of 1860), s. 405—Criminal breach of trust—Definition.*] A clerk in a record-room made over a document forming part of a record in his custody to a person who was entitled to the document, but who would otherwise have had to present an application on stamped paper in order to secure its return in a legal manner. *Held* that the clerk was under the above circumstances rightly convicted under section 409 of the offence of criminal breach of trust by a public servant.—EMPEROR *v.* GANGA PRASAD, I. L. R., 27 All. 260.

49. PENAL CODE—*(Act XLV. of 1860) s. 409—Misappropriation—Burden of proof—Mode of Misappropriation, prosecution not bound to prove.*] A peon was charged with misappropriation of money. The prosecu-

Penal Code (*contd.*)—

tion proved that he had not returned the money when it was his duty to return it; *Held*, that the prosecution had proved its case; and it lay on the accused to prove his defence. The prosecution is not bound to prove the actual mode of misappropriation of the money.—EMPEROR *v.* KADIR BAKSH I. L. R., 33 All. 249.

50. PENAL CODE—*(Act XLV. of 1860), s. 409—Criminal breach of trust—Charge—Criminal Procedure Code, section 222 (2).*] An accused person was charged under s. 409 of the Indian Penal Code with having embezzled an aggregate sum of Rs. 208-12-0 on various dates between the 1st July and the 1st November, 1909. *Held* that the charge so framed was not open to objection, notwithstanding that evidence was available as to the various items of which the aggregate sum charged was composed *Emperor* v. *Gulzari Lal*, I. L. R., 24 All. 254; *Emperor* v. *Ishtiaq Ahmad*, I. L. R., 28 All. 69; *Samiruddin Sarkar* v. *Nibaran Chandra Ghose*, I. L. R., 31 Cal. 928; *Sat Narain Tewari* v. *Emperor*, I. L R., 32 Cal. 1085, and *Thomas* v. *Emperor*, I. L. R., 29 Mad. 558, followed. *Subramania Ayyar* v. *King Emperor*, I. L. R., 25 Mad. 51, distinguished.—EMPEROR *v.* IBRAHIM KHAN, I. L. R., 33 All. 36.

51. PENAL CODE—*(Act XLV. of 1860), s. 411—Possession of stolen property—Joint Hindu family—Liability of head of the family or managing member.*] Stolen property consisting of a considerable quantity of cloth weighing about five maunds was discovered on search by the police in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father, son and grandson. The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family. *Held* that under the above circumstances the conviction of the managing member of the family under section 411 of the Indian Penal Code was a proper conviction. — *Queen-Empress* v. *Sangam Lal*, I. L. R., 15 All. 129, referred to.—EMPEROR *v.* BUDH Lal, I. L. R., 29 All. 598.

52. PENAL CODE—*(Act XLV. of 1860), s. 417, 420 — Cheating — Definition — Pre-emption—Failure to disclose existence of mortgage subsequent to purchase*] The vendee defendant in a suit for pre-emption compromised the suit, the plaintiff agreeing to pay a certain sum in cash and to dis-

Penal Code (*contd.*)—

charge certain incumbrances on the property in suit. It was subsequently discovered that the vendee had, after his purchase but before suit, mortgaged the property which was the subject of the suit for pre-emption. *Held* that the vendee could not, on account merely of his omission to disclose the existence of this subsequent mortgage, be held guilty of the offence of cheating.—GENDAN LAL *v.* ABDUL AZIZ KHAN, I. L. R., 27 All. 302.

53. PENAL CODE—(*Act XLV. of 1860,*) *s. 421—Presidency Towns Insolveecy Act (III. of 1909), ss 17, 103 and 104—Adjudged insolvent—Criminal Proceedings against the insolvent—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate—"Suit or other legal proceeding" interpretation of.*] A person in insolvent circumstances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act, 1909; and was adjudicated an insolvent. Ten days later, a creditor of the insolvent, without having obtained any sanction from the Insolvent Debtors Court, filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under s. 421 of the Indian Penal Code, 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint. *Held*, that the Magistrate's jurisdiction to try the insolvent for an offence under s. 421 of the Indian Penal Code, 1860, was not taken away by anything contained in the Presidency Towns Insolvency Act, 1909. The expression "or other legal proceeding" in s 17 of the Presidency Towns Insolvency Act, 1909, coming after the word "suit," a word of more limited application, must be construed on the principle of *ejusdem generis*. It, therefore, includes only proceedings of a civil nature. —EMPEROR *v.* MULSHANKAR HARINAND BHAT, I. L. R., 35 Bom. 63.

54. PENAL CODE—(*Act XLV. of 1860*), *ss. 425, 426—Definition—Mischief—Act, (Local) I. of 1900 (N.-W. P. and Oudh Municipalities Act), s. 167.*] Certain cattle belonging to one M. H. upon various occasions when in charge of a servant of M. H. strayed or were driven, into the Government Gardens at Saharanpur and there caused damage. *Held*, that M. H. could not on these facts be convicted of the offence of mischief. *Forbes* v. *Grish Chunder Bhattacharjee*, 14 W. R. 31, and *Empress* v. *Bai Baya*, I. L. R., 7 Bom. 126, followed. *Held*, also that s. 167 of the Municipalities Act, 1900, did not apply, that section being one dealing with offences against the person. *King-Emperor* v. *Patan Din*, Weekly

Penal Code (*contd.*)—

Notes 1905, p. 19, followed.—EMPEROR *v.* MEHDI HASAN, I. L. R., 29 All. 565.

55. PENAL CODE—(*Act XLV of 1860*), *s. 429—Cutting off the ears of a horse is 'maiming' within section.*] The cutting off of the ears of a horse is 'maiming' within the meaning of s. 429 of the Indian Penal Code.—MARIGOWDA *v.* SRINIVASA RANGACHAR, I. L. R., 35 Mad. 594.

56. PENAL CODE—(*Act XLV. of 1860*), *s. 434—Boundary marks fixed by authority of public servant—Definition—Criminal Procedure Code, s. 145*] A Magistrate making an order under s. 145 has no authority to cause the property which is subject of a dispute likely to occasion a breach of the peace to be demarcated by boundary pillars, and consequently, if he does so, a person destroying or removing such boundary pillars is not liable to conviction under s. 434 of the Indian Penal Code.—EMPEROR *v.* RAMESHAR, I. L. R., 27 All. 308.

57. PENAL CODE—(*Act XLV. of 1860*), *s. 441—Criminal trespass—Definition—Occupation by zamindars of house left by deceased tenant.*] A tenant of village S who owned a house there but was temporarily residing in a neighbouring village, died, and on his death the zemindars of S took possession of the house in S adversely to the tenant's widow, alleging that they were entitled to it. *Held*, that the action of the zemindars could not be taken as amounting to criminal trespass within the meaning of s. 441 of the Indian Penal Code. *Emperor* v. *Jangi Singh*, I. L. R., 26 All. 194, referred to.—EMPEROR *v.* BAZID, I. L. R., 27 All. 298.

58. PENAL CODE—(*Act XLV. of 1860*), *s. 457—'Intent to annoy' what amounts to.*] A with a view to support a fraudulent claim of title to a house, broke into it during the temporary absence of the owner, assaulted the owner's servant who was in charge of the house and took forcible possession of it:—*Held*, that A was rightly convicted of the offence of house-breaking under s. 457, Indian Penal Code. *Per* BENSON, J.—That an intent to annoy under s. 457 is established if annoyance in the ordinary course of events is known by the person committing the act to be the natural consequence of such act. A man must in law be held to intend the natural and ordinary consequences of his acts, irrespective of what his object was at the time of doing such acts if at such time he knows what the ordinary and natural consequences will be. If he does an act which is illegal, it does not make it legal that he did it with some other object unless the object was such as would under the circumstances render the particular act lawful. *Per* SANKARAN-NAIR J.—

Penal Code (*contd.*)—

That although the act complained of necessarily involved annoyance yet unless the intention of the accused was to annoy, it may be that the act cannot be said to have been committed with intent to annoy. *Emperor* v. *Bazid*, (I. L. R., 27 All. 298), referred to. *Queen-Empress* v. *Rayapadayachi*, (I. L. R., 19 Mad. 240), referred to. A, however, in doing the act complained of intended to use criminal force to the servant in possession and therefore intended to commit an offence.—SELLAMUTHU SERVAIGARAN *v.* PALLAMUTHU KARUPPAN, 35 Mad. 186.

59. PENAL CODE—(*Act XLV. of 1860*) *ss. 464 and 467—No false document where executant simply sets up a false claim but has no intention of causing belief that document was executed by another.*] A, who was not the son, natural or adopted, of the deceased B, executed a deed of mortgage of certain properties of B in favour of C. In the body of the document A was described as the son of B, though no such description appeared in the signature. A was known to C for a long time and A had no intention of causing it to be believed that the document was executed by any other person than himself. *Held*, *Per* MUNRO and ABDUR RAHIM, JJ., that A was not guilty of making a 'false document' within the meaning of s. 464, Indian Penal Code. The assertion of a false claim in a document will not constitute the document false, when it is executed by the party who purports to execute it and there is no intention of causing a belief that it was executed by some other person, real or fictitious. *Per* PINHEY, J.—The document was a 'false document' as it contained a false description. A wanted to cause it to be believed that such a person as the son of B existed and his intention was to defraud the real heir, *i.e.*, the widow of B, A had thus committed the offence of 'forgery' within s. 467 Indian Penal Code.—ADAIKALAMMAI *v.* RAMAN, I. L. R., 32 Mad. 90.

60. PENAL CODE—(*Act XLV. of 1860*), *ss. 465, 471—Forgery and using as genuine a forged document*] In order to obtain admission to the Matriculation Examination of the Madras University as a private candidate, V. was required to produce to the Registrar a certificate signed by the Headmaster of a recognized High school that he was of good character and had attained his twentieth year. V fabricated the Headmaster's signature to such a certificate and forwarded it to the Registrar:—*Held* (SUBRAHMANIA AYYAR and DAVIES, JJ., dissenting) that V was guilty of forgery. *Per* Sir ARNOLD WHITE, C. J.—

Penal Code (*contd.*)—
The offence of forgery is complete if a document, false in fact, is made with intent to commit a fraud, although it may not have been made with any one of the other intents specified in s. 463. It was not necessary having regard to the wording of s. 24 that the accused should have intended to cause both wrongful gain to himself and wrongful loss to the University. Both intentions, however, were present in this case. Moreover, the false document had been made with intent to support a "claim or title" within the meaning of those words as used in s. 463. A claim to be admitted to a University examination is a claim within the meaning of s. 463. It was more clearly so in the present case as the accused had a "claim" to be exempted from the production of an attendance certificate, upon satisfying certain conditions precedent. An intended deprivation of property is not an essential element of an intention to defraud. *Per* BENSON, *J.*—Those decisions which proceed on the ground that an act is not fraudulent unless it causes or is intended to cause loss or injury to some one would seem to take too narrow a view of the meaning of the word "fraudulently" as used in the Code. The act of the accused was fraudulent not merely by reason of the advantage which he intended to secure for himself by means of his deceit, but also by reason of the injury which must necessarily result to the University and through it to the public from such acts if unrepressed. *Per* SUBRAHMANIA AYYAR.—The document was not made fraudulently within the meaning of ss. 464 and 463 of the Code. Deprivation of property, actual or intended, does not constitute an essential element in regard to offences falling under ss. 465 and 471 of the Indian Penal Code; but the deception must involve some loss or risk of loss to an individual or to the public. It is not enough to show that the deception was intended to secure an advantage to the deceiver. *Per* DAVIES, *J.*—It had not been shown that the accused in making the document had either of the intentions necessary to constitute it a false document within the meaning of s. 464. A mere intention to deceive does not necessarily imply an intention to defraud or to cause wrongful loss to one person or wrongful gain to another. A person to be defrauded must suffer some harm or damage or injury and there was no evidence that the Registrar, as representing the University, had suffered in any of these respects. The University had been deprived of nothing and, on the other hand, had profited by the application by the accused. Moreover the intention of the accused was to subject himself to examination, which

Penal Code (*contd.*)—
could not be deemed a thing of value. If he failed, it ended in nothing. If he passed, he became entitled to a certificate not in consequence of the false writing but on his own merits.—KOTAMRAJU VENKATRAYADU *v.* EMPEROR, 28 Mad. 90.

61. PENAL CODE—*(Act XLV. of 1860), s. 494 — Bigamy — Remarriage of Hindu having Christian wife alive.*] A Hindu convert to Christianity married a Christian woman according to the rites of the Roman Catholic religion. Subsequently, and during the lifetime of his Christian wife, he reverted to Hinduism and married a Hindu woman in accordance with the rites of the class to which the parties belonged :—*Held*, the offence of bigamy was not committed. —EMPEROR *v.* ANTONY, 33 Mad. 371.

62. PENAL CODE—*(Act XLV. of 1860), s. 494—Bigamy "Person aggrieved"—Criminal Procedure Code, s. 198—Procedure—Commitment.*] In a case of bigamy the person aggrieved is either the first husband or the second husband and not the father. Where a complaint was preferred by the father of the first husband, which resulted in a commitment on a charge under s 498 of the Indian Penal Code, it was *held* that the commitment was bad.—EMPEROR *v.* LALA, I. L. R., 32 All. 78.

63. PENAL CODE—*(Act XLV. of 1860), s. 494—Native Christian having Christian wife living and marrying Hindu woman, guilty of bigamy under the section.*] A Native Christian, who, having a Christian wife living, marries a Hindu woman according to Hindu rites without renouncing his religion, is guilty of an offence under s. 494, Indian Penal Code. *In re Millad*, (I. L. R., 10 Mad. 218), followed in principle. *In re Ram Kumari*, (I. L. R., 18 Cal. 264), followed in principle. *Proceedings, dated 8th November 1866*, (3 M. H. C. R. App. VII), not followed. *Obiter*: It will make no difference even if he had renounced the Christian religion before contracting the second marriage.—EMPEROR *v.* LAZAR, 30 Mad. 550.

64. PENAL CODE—(*Act XLV. of 1860), s. 498—Enticing away a married woman—Marriage—Hindu law—Whether marriage legal between a Bania and the illegitimate daughter of a Brahman and a Banya woman.*] *Held*, that there was no reason why a marriage between a Banya and the illegitimate daughter of a Brahman father and Banya mother should not be valid according to Hindu law, especially when the marriage was recognized by the caste to which the husband belonged. *Padam Kumari* v. *Suraj Kumari*, I. L. R., 28 All. 458, and *In the Matter of Ram Kumari*, I.

Penal Code (*contd.*)—

L. R., 10 Cal. 264, referred to.—EMPEROR *v.* MADAN GOPAL, I. L. R., 34 All. 589.

65. PENAL CODE—(*Act XLV. of 1860*), *s. 499, exceptions 3, 6, 9, ss. 500, 52—Defamation—Comment—Right of fair comment—Comment should be suggested by and confined to the work under review—Good faith, tests of—Malice, interpretation of the term.*] The word "malice" in the legal use of that term is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind which is wrong or faulty (whether evidenced in action by excess or defect), such as would be unjustifiable in the circumstances and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment which is the subject of the complaint. For whether fair comment is to be regarded as falling under a branch of the law of privilege or not, it cannot excuse an injury arising not from the mere act of criticism, but from a state of mind in the critic which is in itself unjustifiable and the excuse may be so forfeited either by reason of an evil intent in him, or by reason of mere recklessness in making an unwarrantable assertion. For then the comment would not be fair comment at all. Apart from extrinsic evidence of malice, protection must be withheld even from what purports to be criticism, if it states as a fact to be inferred from the book criticised, an imputation for which the book itself contains absolutely no foundation whatever. The right of fair comment involves two essentials, first that the imputation should be comment on the work criticised, and second that it should be "fair"—that is to say, that if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. "Good faith" requires not, indeed, logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate

Penal Code (*contd.*)—

subject of public comment. The object of exception 6 to s. 499 of the Indian Penal Code (Act XLV. of 1860) is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him: he is also bound in the words of the exceptions to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment.—EMPEROR *v.* ABDOOL WADOOD, 31 Bom. 293.

66. PENAL CODE—(*Act XLV. of 1860*), *ss. 511, 124A—Attempt to commit offences—Attempt to commit the offence of sedition—Intention, a question of fact.*] Under the Indian Penal Code (Act XLV. of 1860) all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition, the question of intention is one of fact.—EMPEROR *v.* GANESH BALVANT MODAK, 34 Bom. 378.

Perjury—

PERJURY—*Indian Penal Code (Act XLV. of 1860), s. 193—Criminal Procedure Code (Act V. of 1898), ss. 435, 439—Indian Evidence Act (I. of 1872)—Intentionally giving false evidence in a judicial proceeding—Absence of discussion of evidence for the*

Perjury (*contd.*)—

defence—Explaining away the statement of the accused to his prejudice — Proof — Misreading of documentary evidence — Fundamental errors in principle — Revisional jurisdiction.] According to the Criminal Law in England from which the Indian system is largely drawn, the assignment of perjury must be proved by two witnesses, or by one witness and the proof of other material and relevant facts confirming his testimony. This "is not a mere technical rule but a rule founded on substantial justice." The Indian Evidence Act (I. of 1872) does not provide that there must be corroboration to support a conviction, but in ordinary cases and where the provisions peculiar to Indian Law do not apply, a rule which is founded on substantial justice may well serve as a safe guide to those who have to administer the criminal law in India. Where with reference to an adoption the accused made a statement and where no other expression would with equal propriety have been used to express the corporeal act (of giving and taking in adoption), it is antagonistic to the first principles of criminal jurisdiction to explain away to the prejudice of the accused that statement which in its legitimate sense indicated a corporeal giving and taking. PER JENKINS C.. J.:—A conviction for perjury cannot stand where the *onus* has been wrongly placed; explanations have been demanded from the accused when no occasion for them existed; and the rule that there must be something in the case to make the oath of the prosecution witness preferable to the oath of the accused has not been satisfied. For silence to carry incriminating force in a case like the present there must have been circumstances which not only afforded the accused an opportunity to speak, but naturally and properly called for the declaration which is said to be absent.—EMPEROR *v.* BAL GANGADHAR TILAK, I. L. R., 28 Bom. 479.

Police Act—

POLICE ACT—*Madras District Police Act (XXIV of 1859), s. 44—Police constable not returning to duty after expiry of leave, guilty of offence under.*] A police constable who, having obtained casual leave, does not return to duty on the expiry of such leave and stays away without obtaining fresh leave, is guilty under s. 44 of Act XXIV. of 1859 of the offence of ceasing to perform the duties of his office without leave.—EMPEROR *v.* RAMASAWMY RAJU, I. L. R., 29 Mad. 192.

Possession—

1. POSSESSION—*Dispute concerning land—Omission to publish a copy of the initiatory order at or near the subject of dispute—Jurisdiction—Procedure—Criminal Procedure Code (Act V. of 1898), s. 145, cls. (1) and (3)—Revision—Power of High Court to interfere in revision—Prejudice—Charter Act (24 and 25 Vic., c. 104), s. 15*] Where the Magistrate drew up an initiatory order under s 145, cl. (1) of the Criminal Procedure Code, but omitted to direct the publication of a copy of it at or near the subject of dispute, and it was not so published in accordance with cl. (3) of that section: *Held* that the provision as to the publication of a copy of the order in s. 145, cl. (3) of the Code, is directory, and relates to a matter of procedure only and not of jurisdiction; that if cl. (1) of s. 145 has been complied with, the Magistrate has jurisdiction to deal with the case, and the mere fact that he omitted to have a copy of such order published by affixing it to some conspicuous place at or near the subject of dispute does not deprive him of jurisdiction, but is an irregularity in his procedure. The power of interference of the High Court in cases under s. 145 of the Code is only under s. 15 of the Charter Act. It is discretionary and ought in such cases to be exercised with every caution. Where a lower Court has proceeded with irregularity, the High Court should not interfere, unless it can be shown that some one has been materially prejudiced by such irregularity. If, however, the subordinate Court has acted without jurisdiction, the High Court will interfere. Where the parties were duly served and appeared and the case was contested before the Magistrate, and it was only subsequently discovered by searching the records that a copy of the initiatory order had not been published locally, and where it was not suggested that any one had been in the least prejudiced by the omission, it was *held* that the High Court ought not to interfere under s. 15 of the Charter Act. *Per* GHOSE, J.—The Magistrate acquires jurisdiction when the conditions of cl. (1) have been fulfilled, and cls. (3) and (4) lay down the procedure by which the jurisdiction is to be exercised, but the procedure prescribed is mandatory and not simply directory. When a Magistrate fails to comply with cl. (3), he does not act without jurisdiction, but illegally in the exercise of his jurisdiction, and the High Court has the power to interfere under the Charter Act. But such non-compliance is not an illegality, which makes it obligatory upon the Court to interfere, unless some prejudice to any party has been thereby occasioned. *Janu Manjhi* v. *Maniruddin* (8 C. W. N. 590), *Nawab Khajah Solemollah* v. *Ishan Chandra Das*, (9 C. W. N. 909) overruled.—SUKH

Possession (*contd.*)—

LAL SHEIKH *v.* TARA CHAND TA, I. L. R., 33 Cal 68; (F. B.)

2. POSSESSION—*Breach of the Peace—Dispute concerning land—Criminal Procedure Code (Act V. 1898), s. 145 (1)—Initiatory order—Omission to state therein specific grounds for the apprehension of a likelihood of a breach of the peace—Express reference in the order to a police-report containing sufficient grounds for such apprehension—Sufficiency of statement of grounds*] Where an initiatory order under s. 145 (1) of the Criminal Procedure Code, was drawn up in the following terms: "Whereas it appears from the police-report dated the 23rd January 1905, that there exists a dispute, which is likely to cause a breach of the peace between the abovenamed parties for the possession of 2 bighas and 18 cottahs in three plots of land . . . . . it is ordered that the said parties do attend, etc,"—and the police-report set out sufficient grounds for the apprehension of a likelihood of a breach of the peace: *Held* that the order was not defective because it was not self-contained and did not state in express terms the grounds upon which the Magistrate was satisfied that a disoute likely to cause a breach of the peace existed, when such grounds appeared in the police-report on which the order was tounded and to which it made reference in express terms. *Goluck Chandra Pal* v. *Kali Charan De*, (I. L. R., 13 Cal. 175); *Dhanput Singh* v. *Chatterput Singh*, (I. L. R., 20 Cal. 513), approved of.—KHOSH MAHOMED SIRKAR *v.* NAZIR MAHOMED, I. L. R., 33 Cal. 352, (F. B.)

3. POSSESSION—*Breach of the peace—Chur—police report, contents of—Extraordinary jurisdiction of the High Court—Criminal Procedure Code (Act V. of 1898), s. 145—Charter Act (24 & 25 Vic., c. 104) s. 15.*] A reference by the Magistrate in the initiatory order to a police-report, which clearly sets out the likelihood of a breach of the peace, is a sufficient statement of his reasons for being satisfied of the existence of a dispute likely to cause such breach of the peace. *Khosh Mahomed Sircar* v. *Nasir Mahomed*, (9 C. W. N. 1065) followed. The police-report on which the Magistrate founds the initiatory order should contain a statement of facts from which he may be satisfied of the existence of a likelihood of a breach of the peace. It is essential for the assumption of jurisdiction by a Magistrate that he should be satisfied, from a police-report or other information, that there is a likelihood of a breach of the peace: the mere fact

Possession (*contd.*)—

that there is a dispute concerning land is not sufficient by itself to give him jurisdiction. *Gobind Chunder Moitra* v. *Abdool Sayad*, (I. L. R., 6 Cal. 835) and *Anesh Molla* v. *Ejaharuddin*, (I. L. R., 28 Cal. 446) referred to. The Magistrate should exercise his own judgment in arriving at a conclusion as to the likelihood of a breach of the peace from the materials before him or the circumstances within his knowledge, and he ought not to act upon a mere expression of opinion by the police not accompanied by a statement of facts sufficient to satisfy him and to enable him to form his own opinion. But it is not necessary that the police-report should show an actual assembly of men or other specific overt acts. *Puddomonee Dassee* v. *Juggodumba Dassee* (25 W. R. Cr. 2) and *Rajah Run Bahadur* v. *Ranee Tilessuree Koer* (22 W. R. Cr. 79) dissented from. The High Court should not ordinarily examine whether the grounds on which the Magistrate was satisfied as to the likelihood of a breach of the peace afford a reasonable foundation for his conclusion. *Dhanput Singh* v. *Chatterput Singh* (I. L. R, 20 Cal. 513) dissented from. The "imminence" of a breach of the peace, as indicating a higher degree of the chance of the event happening than is denoted by the "likelihood" of it, is not essential for the exercise of jurisdiction by the Magistrate. *Gobind Chunder Moitra* v. *Abdool Syed* (I. L. R., 6 Cal. 835), *Kali Kissen Tagore* v. *Anund Chunder Roy*, (I. L. R., 23 Cal. 557), and *Janu Manjhi* v. *Maniruddin* (8 C. W. N. 590) dissented from. *Uma Churn Santra* v. *Beni Madhub Roy* (7 C. L. R. 352), and *Damodur Biddyadhur Mohapatro* v. *Syamanund Dey* (I. L. R., 7 Cal. 385), approved of. Under s. 15 of the Charter Act, the Court will not interfere unless it is satisfied that the party seeking the interference has been prejudiced by the proceedings in the Court below. *Sukh Lal Sheikh* v. *Tara Chand Ta* (9 C. W. N. 1046) followed. *Sheikh Munglo* v. *Durga Narain Nag* (25 W. R. Cr. 74). *Chunder Madhub Ghose* v. *Jugut Chunder Sen* (4 C. L. R., 483), *Queen Empress* v. *Gobind Chandra Das* (I. L. R., 20 Cal. 520) and *Kali Kissen Tagore* v. *Anund Chunder Roy* (I. L. R., 23 Cal. 557) explained. *Gour Mohun Majee* v. *Dollubh Majee* (22 W. R. Cr. 81) referred to. Where a party chooses to wait and takes the chance of a jndgment in his favour, he cannot be heard to complain of an excess of jurisdiction and to claim, as a matter of right, that the proceedings should be set aside. There is no inflexible rule of

Possession (*contd.*)—

law that a Magistrate, in deciding the question of possession under s. 145 of the Code, is concluded by every previous order of a Civil or Criminal Court relating to the subject of dispute, and the weight to be attached to any such previous order depends on the facts and circumstances of the particular case. *Gobind Chunder Moitra* v. *Abdool Sayad* (I. L. R., 6 Cal. 835), *Sims* v. *Jahurry Lal* (5 C W. N. 563), and *Doulat Koeri* v. *Rameswari Koeri* (I. L. R., 26 Cal 625), distinguished. *Lowsen Santal* v. *Kali Charan Santal* (8 C. W. N. 719), and *Gulraj Murwari* v. *Sheik Bhatoo*, (I. L. R., 32 Cal. 796) approved of.—KULADA KINKAR ROY *v.* DANESH MIR, I. L. R., 33 Cal. 33; 10 C. W. N. 257.

4. POSSESSION—*Criminal Procedure Code (Act V. of 1898), s. 147—Construction of the words "concerning any land"—Landlord and tenant—Right of tenant to enclose cultivable land by a wall.*] The enclosing by a tenant of cultivable lands by a wall instead of a hedge is not *prima facie*, an interference with the landlord's rights and ought not to be interferred with under s. 147 of the Code of Criminal Procedure by a Magistrate, being a matter to be settled by a Civil Court. In such cases, if a breach of the peace is apprehended, security must be taken from the party in possession. The words "concerning the use of land" in s. 147 of the Code of Criminal Procedure cannot be qualified and the section construed as if it contained words that the user to which the dispute relates, is a user by a party other than the party in possession. *The Empress* v. *Ganaput Kalwar* (4 C. W. N., 779), not followed. *Subba* v. *Trincal*, (I. L R, 7 Mad. 461), referred to and followed. — ARUNACHELLAM CHETTIAR *v.* CHIDAMBARAM CHETTI, I, L. R., 29 Mad. 97.

5. POSSESSION—*Criminal Procedure Code (Act V. of 1898), s. 147—Dispute as to right to use a mosque within the section—Charter Act, s. 15.*] An order, under s. 147 of the Code of Criminal Procedure, declaring possession to be with a certain person is illegal when there has been no enquiry as to the party in possession and will be set aside under s. 15 of the Charter Act. A dispute as to the right to use a mosque between persons claiming to be entitled to officiate as Kazi therein is a dispute coming within s. 147 of the Code of Criminal Procedure.—KADER BATCHA *v.* KADER BATCHA ROWTHAN, I. L. R., 29 Mad. 237.

6. POSSESSION—*Criminal Procedure Code (Act V. of 1898), s. 145—Enquiry to be held before issuing preliminary order—Jurisdiction of Magistrate—Failure of jurisdiction where Magistrate refuses to receive evidence which party is entitled to adduce under s. 145 (5).*] In order that a Magistrate may have jurisdiction to act under s. 145 of the Code of Criminal Procedure, he must be satisfied from a police report or other information, that a dispute likely to cause a breach of the peace exists concerning any land, etc. Where there is no police-report, the statement of interested parties ought to be received with great caution and ought not to be acted upon unless they are corroborated by the testimony of less interested persons. The opposite party also, ought to be given an opportunity of cross-examining the party making such statements before the Magistrate takes any action on them. Under s. 145 of the Code of Criminal Procedure, a party who is required by a preliminary order to attend at the Magistrate's Court is entitled to show that no dispute likely to cause a breach of the peace exists or bad existed, and it is not open to such Magistrate to refuse such evidence when tendered. Where the Magistrate refuses to receive such evidence, his order will be set aside as having been passed without jurisdiction. *Per* DAVIES, J.—A Magistrate acts *ultra vires* in clubbing together disputes relating to a large number of villages and treating them as one. Each village must stand on its own footing and the Magistrate should satisfy himself that a dispute existed in respect of all the villages. He should ascertain, as regards each village, which party was in possession at the date of the order and confirm that possession. The object of Chapter XIV. of the Code of Criminal Procedure being to procure prompt action to avert breaches of the peace, the Legislature could not have contemplated under that chapter wholesale proceedings in regard to a large number of villages which, if the procedure above stated be adopted, would entail a prolonged enquiry.—SREEMAN KUMARA TIRUMALRAJA BAHADUR, RAJAH OF KARVETNAGAR *v.* SOWCAR LODD GOVIND DOSS, I. L. R., 29 Mad. 561; 16 M. L. J. 419.

7. POSSESSION—*Criminal Procedure Code (Act V. of 1898), s. 148 (3)—Award of costs may be made within a reasonable time after disposal of the main question.*] An award of costs under s. 148 (3) of the Code of Criminal Procedure should, in the usual course, be contemporaneous with the decision of the main question. Where, however, circumstances require the postponement of the award of costs, it should be made within a reasonable time after the disposal of the principal subject of the proceed-

Possession (*contd.*)—

ing, in the presence of both parties.—VYTHIANADA TAMBIRAN v. MAYANDI CHETTY, I. L. R., 29 Mad. 373.

8. POSSESSION — *Criminal Procedure Code, s. 145—Definition—"Crops or other produce of land"—Crops severed from the land not within the definition—Jurisdiction*] *Held* that the words "crops or other produce of land" as used in s 145 (2) of the Code of Criminal Procedure do not include crops which have been severed from the land upon which they grew. A Magistrate has therefore no jurisdiction to attach under s. 146 of the Code a crop of *mahua* no longer growing on the trees. *Ramzan Ali* v. *Janardhan Singh* (I. L R., 30 Cal. 110) followed.—CHAURASI *v* RAMA SHANKAR, I. L. R., 28 All 268; 3 A. L. J., 13.

9 POSSESSION—*Criminal Procedure Code, ss. 145 (5) and 435 (3)—Order of Magistrate on dispute as to possession of immoveable property — Revision — Jurisdiction of High Court*] The order to which finality is given under ss 145 (5) and 435 3) of the Code of Criminal Procedure must be an order which not only purports to be but is in reality an order under s. 145, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void and the High Court in the exercise of its revisional powers is competent to interfere with it *Hurbullubh Narain Singh* v. *Luchmeswar Prasad Singh*, (I L. R., 26 Cal 138). In re *Pandurang Govind*, (I. L. R., 24 Bom 527) and *Agra Bank* v *Leishman* (I. L R., 18 Mad 41) referred to. Where a Magistrate under circumstances which would apparently have justified his taking action under s 145 of the Code of Criminal Procedure took action in fact under s. 107, and having passed an order seemingly under s. 118, added, as it were, as an appendix to this order:—'Bisu Ahir put in possession under s. 145, Code of Criminal Procedure"—it was *held* that this order, passed without any of the procedure prescribed by s. 145 being adopted was more than an irregularity, and was an order passed without jurisdiction and liable to revision by the High Court. *Mohesh Sowar* v. *Narain Bag*, (I L. R. 27 Cal. 981), and *Sakar Dusadh* v. *Ram Pargash Singh*, (7 C. W. N., 174), referred to.—MAHADEO KUNWAR *v.* BISU, I. L. R. 25 All. 537.

10. POSSESSION — *Evidence — Order unsupported by evidence—Criminal Procedure Code (Act V. of 1898), s 147*] In proceedings under s. 147 of the Criminal Procedure Code, the first party filed their written statement and Magistrate having declined to give the second party time to file their written statement, made an order under that section in favour of the first party without recording any evidence. *Held*, that the Magistrate ought to have had some evidence in proof of the allegations contained in the written statement; and that there being no such evidence upon which the order could be supported, it should be set aside. *Haro Mohan Sardar* v. *Gobind Sahu*, (7 C. W. N. 351), distinguished.—MAHOMED NUR *v.* BIKKAN MAHTON, I. L. R., 30 Cal. 918.

11. POSSESSION — *Criminal Procedure Code, s. 522—Act XLV. of 1860 (Indian Penal Code), s. 350—Restoration of possession of immoveable property—Use of criminal force*] To support an order under s. 522 of the Code of Criminal Procedure, restoring possession of immoveable property, it is necessary for the Court to find as a fact, not only that the person in whose favour such order is made was deprived of possession by an offence, but that such offence was attended by the use of criminal force. *Ram Chandra Boral* v. *Jityandria* (I L. R., 25 Cal. 434); and *Ishan Chandra Kalla* v. *Dina Nath Badhak*, (I. L R., 27 Cal. 174), followed.—CHURAMAN *v.* RAM LAL, I. L. R., 25 All. 341.

12. POSSESSION—*Decree of Civil Court, duty of Magistrate—Code of Criminal Procedure (Act V of 1898), s. 145*] Where in execution of a decree a Civil Court had given symbolical possession of the lands in dispute to the first party on the 9th September 1900, and proceedings under s. 145 of the Code of Criminal Procedure were instituted between the parties to the decree in the following December and the Magistrate found and maintained the possession of the second party: *Held*, that the Magistrate was bound to give effect to the decree of the Civil Court and to maintain the party in possession who under the decree had already been put in possession of the property in dispute. *Doulat Koer* v *Rameswari Koeri* (I. L. R., 26 Cal. 625) referred to.—KUNJA BEHARI DAS *v.* KHETRA PAL SING, I. L. R., 29 Cal. 208.

13. POSSESSION — *Criminal Procedure Code (Act V. of 1898), s 145—Dispute regarding right to collect rents—Jurisdiction of Magistrate—Appointment of Receiver of a joint estate—Joint owners governed by Mitakshara Law*] There is no want of jurisdiction in a Magistrate to proceed under s. 145 of the Criminal Procedure Code, because the dispute is one regarding the right to the collection of rents between joint owners governed by the Mitakshara School of Hindu Law. Nor can the appointment of a Receiver of the joint estate,

Possession (*contd.*)—

subsequent to the passing of the order by the Magistrate, affect the question of the jurisdiction of the Magistrate at the time when he passed the order.—SRI MOHAN THAKUR *v.* NARSING MOHAN THAKUR I. L. R., 27 Cal. 259.

14. POSSESSION — *Criminal Procedure Code* (*Act V. of 1898*), *ss. 144, 145, 146—Dispute in respect of colliery—Order under s. 144—Prohibition to both parties from exercising right of possession—Proceedings under s. 145—Date of possession*] On the 10th of November 1899, the Magistrate passed an *ex-parte* order under s. 144 of the Criminal Procedure Code, by which both parties to a dispute were prohibited from exercising any right of possession in respect of a colliery. Subsequently proceedings under s. 145 of the Code were instituted in respect of the same colliery and between the same parties. On the 29th of January 1900, the Magistrate, having found that the second party had been in possession on the 10th of November 1899, passed an order declaring them to be in possession. *Held* that the proper way of dealing with this case in interpreting the Magistrate's order was to hold that, whereas by reason of the operation of his order under s. 144 of the Code of the 10th of November 1899, no evidence could be offered to show the possession of either party from that date up to the 29th of December, he was consequently obliged to ascertain the possession immediately before this order, and to regard his intervention as an attachment suspending the previous possession, whatever it might be, but that, at the same time, the former possession continued, and although the lawful exercise of its rights had been forbidden for a time, the possession had never ceased to exist. That the order of the Magistrate was correct.—JOYANTI KUMAR MOOKERJEE *v.* J. B. MIDDLETON, I. L. R., 27 Cal. 785.

15. POSSESSION — *Ownership of Land, Dispute as to—Collection of rents—Zemindars and tenants* versus *rival zemindars and tenants—Necessary parties to proceedings under s. 145 of the Criminal Procedure Code* (*Act V. of 1898*)*—Parties concerned, Meaning of—Omission to add necessary parties—Addition of parties during proceedings—Revision and alteration of character of such proceedings by succeeding Magistrate—Jurisdiction of Magistrate—Revision, Power of High Court to interfere—Criminal Procedure Code* (*Act V. of 1898*), *ss. 145, 429—Charter Act* (*24 and 25 Vict., c. 104*), *cl. 15.*] The words in s. 145 of the Criminal Procedure Code, "parties concerned," in a dispute do not necessarily mean only the parties who are disputing, but include also persons who are interested in,

Possession (*contd.*)—

or claiming a right to, the property in dispute. It is the duty of the Magistrate, on the materials before him, to ascertain, so far as he can, who are the persons interested in, or claiming a right to, the property in dispute and to give notice to them all, so that the whole matter, so far as his Court is concerned, may be disposed of in one proceeding. *Ram Chandra Das* v. *Monohur Roy* (I. L. R., 26 Cal 188), and *Protap Narain Singh* v. *Rajendra Narain Singh* (I. L. R., 31 Cal 29) followed. Where there was a dispute as to the ownership of lands between certain zemindars and their tenants on the one side, and other zemindars and their tenants on the other, and the real matter for determination was not merely which of the two parties of zemindars were entitled to collect the rents of the lands, but also which set of rival tenants was entitled to hold actual possession of the lands, and in a proceeding under s. 145 of the Criminal Procedure Code the zemindars only were made parties, and not the tenants, *held* (AMEER ALI and STANLEY, *JJ.*) that the tenants were necessary parties to the proceeding, and the omission to make them parties went to the root of the case, and was an illegality affecting jurisdiction, which would justify the High Court in setting aside the order. PRINSEP, *J.*—The omission to join the tenants could not vitiate an order as between the zemindars on an objection that it was without jurisdiction, and that no question of jurisdiction arose in the matter. The High Court's powers are under the Charter Act, and these could be exercised only in respect of jurisdiction, where a Magistrate recorded proceedings under s. 145 of the Criminal Procedure Code, and his successor on the same materials revised those proceedings, altering their entire character, converting the dispute which was originally stated to be a dispute regarding the actual possession of the land into a dispute regarding the collection of rent between the persons named therein. *Held* (AMEER ALI and STANLEY, *JJ.*) that it was an abuse of jurisdiction on the part of the Magistrate so to alter the proceedings, and an abuse which would justify the intervention of the High Court under the powers conferred by the Charter. AMEER ALI, *J.*—The High Court has the power to interfere both under its revisional jurisdiction as also under cl. 15 of the Charter. *Hurbullubh Narain Singh* v. *Lachmeswar Prosad Singh* (I. L. R., 26 Cal. 188) referred to.—LALDHARI SINGH *v.* SUKDRO NARAIN SINGH, I. L. R., 27 Cal. 892.

16. POSSESSION—*Jurisdiction — Dispute regarding right to property — Power of*

Possession (*contd.*)—

Magistrate to determine rights and shares of parties—Civil Court—Criminal Procedure Code (Act V. of 1898), ss. 144, 145.] It is not because private parties or members of the same family dispute regarding their respective rights to land or crops that a Magistrate is called upon to interfere. A Magistrate cannot take upon himself to decide questions of fact and Mahomedan law, so as to satisfy himself as to what are the actual rights of the parties to the lands in dispute. If he has good reasons to believe that such a dispute is likely to cause a breach of the peace, the law enables him to ascertain and maintain actual possession, or, if it is shewn that the members of the family are inclined to break the peace, he can bind them all over to keep the peace. Where there was a dispute between the parties, who were related to one another as to the amount of their shares to certain property which was claimed on the one hand to be joint in certain shares, and on the other hand to exclusively belong to the other party, and no proceedings had been taken under s. 145 of the Criminal Procedure Code, nor was there anything to show that there was any probability of a breach of the peace, the Magistrate passed the following order: "The applicants must not plough more than 12 annas of the land." *Held* that such an order could not properly fall within s 144 of the Criminal Procedure Code, as an order under that section could only be passed on some emergency, and would have effect for only two months. The present order in its operation would have effect, and was intended to have effect, until the parties went to a Civil Court to settle their disputes, and no emergency was even suggested. That the order, therefore, was entirely without any 'authority of law, and must be set aside.—DAIMULLA TALUKDAR *v.* MAHARULLA TALUKDAR, I. L. R, 27 Cal. 918.

17 POSSESSION—*Order of Criminal Court as to—Order instituting proceedings under s. 145 of the Criminal Procedure Code (Act V. of 1898)—Contents of such order—Irregularity in order, making proceedings without jurisdiction.*] Unless a Magistrate complies strictly with the terms of s. 145 of the Criminal Procedure Code by stating in his written order all the particulars necessary to enable him to act under that section, his proceedings are without jurisdiction. It is not sufficient that the Magistrate should have before him a police report, and that he should have given orders thereon that a written order be drawn up within the terms of s. 145. It is his duty to draw up, or have drawn up, and order which, in all respects, satisfies the requirements of the law. It is absolutely necessary that the written order should be correct and complete in its terms.—MOHESH SOWAR *v.* NARAIN BAG, I. L. R.. 27 Cal. 981.

18. POSSESSION—*Criminal Procedure Code (Act V. of 1898), ss. 144, 145, 435, 439—Dispute about right to perform service in a public temple— Notice — High Court — High Court's criminal revisional jurisdiction.*] A Magistrate, professing to act under s 145 of the Criminal Procedure Code (Act V. of 1898), is bound to follow the proper procedure. He must set forth the grounds on which he is satisfied that there is a dispute likely to cause a breach of the peace. He is bound to issue notices to all parties concerned, so as to give them an opportunity to put in their respective claims. And his order should not interfere with the rights of the parties as determined by previous decisions of the Civil Court. A dispute relating to the right of performing religious service in a public temple, when it is likely to cause a breach of the public peace, falls under s. 145 of the Criminal Procedure Code (Act V. of 1898). The High Court ordinarily has no jurisdiction to interfere with an order under Ch. XII. of the Criminal Procedure Code (Act V. of 1898), which is not a proceeding within the meaning of s. 435 of the Code; but when the Magistrate exceeds his jurisdiction under s. 144 or 145, the High Court has power to interfere under its revisional jurisdiction (s. 439). A dispute arose between certain classes of priests attached to a Hindu temple, about the right of performing a certain religious service. On the complaint of one of the parties, the Magistrate of the District, purporting to act under s. 145 of the Criminal Procedure Code (Act V. of 1898), passed an *ex-parte* order, prohibiting the other party from taking any part in the said service, although both parties had been previously declared by the Civil Court to be entitled to officiate at the service. *Held* that the order was illegal, and opposed to the provisions of s. 145 of the Code.—*In re* PANDURAG GOVIND, I. L. R., 24 Bom. 527.

Post office Act—

POST OFFICE—*(Act VI. 1898), ss. 35, 64, 74—Rules framed under Act, infringement of, falls within s. 63—General power to frame rules conferred by s. 74. cl. (1), not confined to such rules as are contemplated by s 74. cl. 2.*] Rules, framed by the Governor General in Council under section 74, clause (1) of the Post Office Act regarding the declaration in the case of articles sent by value payable post form part of the Act under section 74 (8) and infringemen

Post Office Act (*contd.*)—

of such rules is punishable under section 64. Section 35 also enables the Governor-General in Council to make such rules. The general power to make rules conferred by section 74, clause (1), is not confined to making such rules as are contemplated by clause 2.—THE CROWN PROSECUTOR *v.* KOTHANDARAMIAH, I. L. R., 33 Mad. 511.

Practice—

1. PRACTICE — *Appeal — Criminal Procedure Code (Act V of 1898), s. 421—Judgment of Appellate Court, contents of.*] It is very desirable that an Appellate Court without going to the length of writing an elaborate judgment should, in deciding a criminal appeal, notice briefly but clearly the objections urged on appeal, and how they were disposed of.—EKCOWRI MUKERJEE *v.* EMPEROR, I. L. R., 32 Cal. 178.

2. PRACTICE—*Criminal motion to High Court without previous application to lower Court with concurrent jurisdiction—Criminal Procedure Code (Act V. of 1898), ss. 435 to 439.*] The High Court will not enertain an application for revision in cases where the Sessions Judge or Magistrate has concurrent jurisdiction, whether final or not, save on some special ground, unless a previous application has been made to the lower Courts: but where concurrent jurisdiction is not possessed by the lower Courts, no such general rule exists. *Queen-Empress* v. *Reolah*, (I. L. R, 14 Cal. 887), followed.—EMPEROR *v.* ABDUS SOBHAN, I. L. R., 36 Cal. 643.

3. PRACTICE—*Sentence—Magistrate passing non-appealable sentence — Adding to sentence to make it appealable—Appeal to Sessions Judge — The Sessions Judge to entertain the appeal and to decide it on merits—Criminal Procedure Code (Act V. of 1898), s. 413.*] The Magistrate trying a case passed at first a non-appealable sentence on the accused, but at the request of the accused, made an addition to the sentence passed so as to make it appealable. When the accused appealed to the Sessions Judge his appeal was dismissed on the ground that no appeal lay inasmuch as the sentence first passed by the Magistrate was not appealable and the addition to the sentence could not be made legally. In revision:—*Held*, that the Sessions Judge had committed an error in holding that he had no jurisdiction to hear the appeal; for though the Magistrate had no jurisdiction to alter the sentence once passed by him, yet for the purposes of the Sessions, Judge's jurisdiction, so far as the appeal was concerned, that was the very mistake which he was called upon to correct by way of appeal. When the appeal was heard again by the

Practice (*contd.*)—

Sessions Judge he struck out the addition made by the Magistrate in the sentence, and having done that, dismissed the appeal on the grouud that the sentence appealed from was not appealable. In revision:—*Held*, that when the Magistrate had passed a sentence beyond one month, an appeal lay to the Sessions Judge, under section 413 of the Criminal Procedure Code, whether that sentence was passed legally or illegally. *Held*, also, that the Sessions Judge being once seized of the appeal the whole appeal became open to his Court, even on merits.—EMPEROR *v.* KESHAVLAL VIRCHAND, I. L. R., 35 Bom. 418.

Presidency Magistrate—

PRESIDENCY MAGISTRATE — *Judgment—Record of reasons for conviction—Evidence—Sentence of imprisonment—Criminal Procedure Code (Act V. of 1898) s. 370, cl. (i).*] S. 362 of the Criminal Procedure Code prescribes that the evidence in appealable cases, that is, in which a Presidency Magistrate imposes a fine exceeding Rs 200 or imprisonment for a term exceeding six months, shall be duly recorded. There is no obligation in law to record evidence in other cases; the discretion rests with the Magistrate. Under the provisions of s. 370, cl. (*i*) of the Criminal Procedure Code, the Magistrate should state the reasons for conviction in such a manner that the High Court on revision may judge whether there were sufficient materials before him to support the conviction. The law does not demand a full and complete statement of reasons, but only a brief one.—EMAMAN *v.* EMPEROR, I. L. R., 31 Cal. 983.

Presidency Magistrates' Courts—

PRESIDENCY MAGISTRATES' COURTS—*Jurisdiction of, inter se—Transfer, High Court has power of, from Court of Chief Presidency Magistrate to court of another Presidency Magistrate—Criminal Procedure Code (Act V. of 1898), ss. 21, cl. (2); 526, cl. (ii); Charter Act, s. 15.*] The Court of the Chief Presidency Magistrate and those of the other Presidency Magistrates, are "courts of equal jurisdiction" within the meaning of s. 526, clause (ii), Criminal Procedure Code (Act V. of 1898). The High Court has power to transfer a case from the file of the Chief Presidency Magistrate to that of another Presidency Magistrate.—*See* IN RE VENKATESWARA SASTRI, I. L. R., 35 Mad. 739.

Press Act—

PRESS—*Act (XXV. of 1867), ss. 4 and 5—Declaration made by owner who took no part in managing a printing press—Publication of a seditious book at the press—Penal Code (Act XLV. of 1860),*

Press Act (*contd.*)—

s. 124A—Sedition—Intention.] The accused made a declaration under Act XXV. of 1867, s. 4, that he was the owner of a press called "The Atmaram Press." Beyond this, he took no part in the management of the press which was carried on by another person. A book styled "Ek Shloki Gita" was printed at this press. It was a book that dealt to a large extent with metaphysics, philosophy and religion. It also contained seditious passages scattered among discussions of religious matters. It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was convicted of the offence punishable under s. 124A of the Indian Penal Code, 1860, as publisher of the book. On appeal, *Held*, by CHANDAVARKAR, J., that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, a reasonable doubt arose as to the guilt of the accused, the benefit of which should be given to him *Held*, by HEATON, J., that before the accused could be convicted under s. 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection; and that the evidence fell very short of proving the intention. *Per* CHANDAVARKAR J.:—A declaration made under s. 4 of the Press Act is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on a person declaring in respect of matters where public interests are involved. Hence where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive; it is not one of law, but of fact, and it is open to the accused to rebut it.—EMPEROR v. SHANKAR SHRI KRISHNA DEV, 35 Bom. 55.

Previous Conviction—

PREVIOUS CONVICTION—*Enhanced punishment after previous conviction for similar offences—Attempt to commit an offence—Penal Code, ss. 454, 511, 75.*] *Held* that s. 75 of the Penal Code does not apply where either the previous conviction or the charge on which the prisoner is being tried is for an attempt punishable

Previous Conviction (*contd.*)—

under s. 511 of the Code. *Queen-Empress v. Ajudhia* (I. L. R., 17 All. 121) and *Queen-Empress* v. *Bharosa* (I. L. R., 17 All. 123), followed.—JHAMMAN LALL *v.* KING-EMPEROR, 14 P. R., 1906 Cr.

Previous Conviction, Evidence of—

PREVIOUS CONVICTIONS EVIDENCE OF—*Belonging to a Gang of Thieves—Habit—Evidence of habit—Admissibility of Evidence of previous convictions of offences against property and of bad livelihood—Penal Code (Act XLV. of 1860) s. 401.*] Where the other evidence in a case under s. 401 of the Penal Code establishes association for the purpose of habitually committing theft, evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit; and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts. *Empress v. Naba Kumar Patnaik*, 1 C. W. N. 146, *Meher Ali Sarkar* v. *Emperor* (Cr. App. 742 of 1900, decided 20th March, 1901, by PRINSEP AND HILL JJ.) (unreported), *Madhu Dhari* v. *Emperor* (Cr. App. 582 of 1905, by RAMPINI AND MOOKERJEE JJ.) (unreported), *Khanta Karwal* v. *Emperor* (Cr. App. 78 of 1909, decided 28th January, 1909 by HOLMWOOD AND RYVES JJ.) (unreported), 8, *Gobardhan* v. *Emperor* (Cr. App. 958 of 1910, decided 21st November, 1910, by HOLMWOOD AND FLETCHER JJ.) (unreported), referred to *Mankura Pasi* v. *Queen-Empress*, I. L. R., 27 Cal. 139, doubted and explained.—BHONA *v.* EMPEROR, I. L. R., 38 Cal. 408.

Previous Statement—

PREVIOUS STATEMENT—*Contract Act (IX. of 1872), s. 288—Previous statement to committing Magistrate retracted in Sessions Court—Use of such statement by Sessions Court as substantive evidence—Evidence Act (I of 1872), s. 30—Confession of co-accused—"Taking into consideration"—Finding of arms and stolen property in joint family-house—Penal Code (Act XLV. of 1860), s 412.*] Where a witness who has made a statement before the committing Magistrate, subsequently resiles from that statement in the Court of Session the statement made before the committing Magistrate can be used under s. 288 of the Criminal Procedure Code to contradict the witness; but the use of such statement as substantial evidence of the facts alleged by the witness on the prior occasion is fraught with the gravest peril, and could never have been the intention of the Legislature. The words "take into consideration" in s. 30 of the Evidence Act (I. of 1872) do not mean

Previous Statement (*contd.*)—

that the confession referred to in the section is to have the force of sworn evidence. *Queen-Empress* v. *Khanlia* (I. L. R., 15 Bom. 66) referred to. *Held*, the bare finding of stolen property and arms in the house of a joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction.—QUEEN-EMPRESS *v.* NIRMAL DAS, I. L. R., 22 All. 445.

Printing Press—

PRINTING PRESS, — *Forfeiture of* — "*Newspaper*," *definition of*—*Paper not containing periodically public news or comments thereon*—*Onus of proof of character of the paper*—*Formal proof of newspaper and offending matter*—"*Incitement*" *to murder and acts of violence* — *Use of seditious language*—*Newspapers* (*incitement to offences*) *Act* (*VII. of 1908*) *ss. 2* (*1*) (*b*) *3*—*Power of third Judge on difference of opinion between Judges of the Court of Appeal, to deal with the whole case against an accused*—*Criminal Procedure Code* (*Act V. of 1898*), *s. 429.*] The definition of a "newspaper" in s. 2 (1) (b) of Act VII of 1908 must be read as a whole. It refers to a work which publishes periodically public news or comments thereon. It is not enough to take a single issue of it, and to pick out an isolated sentence or a paragraph therein which might by stretch of language be interpreted to contain public news or comments thereon. When it is disputed whether a work is a "newspaper" the prosecution ought to establish its alleged character by proof of the contents of more than one issue. To bring a case under s. 3 (1) of the Act the character of the offending paper as a "newspaper" has to be first established, and this may not always be possible by the production and proof of the contents of one issue only. In a proceeding under s 3 of the Act the newspaper and the offending matter must be regularly proved. In such cases it is essential that the proceedings should be regularly conducted and the forms of law observed S. 3 (1) of the Act confers very limited powers of forfeiture and applies only to the cases of presses used for the printing of newspapers which contain an incitement to the particular crimes or class of crimes specified therein. The word "incitement" clearly implies the idea of rousing to action, instigation or stimulation. The use of seditious language, sufficient to bring the case under s. 124 A of the Penal Code, is not equivalent to an incitement to offences mentioned in s 3 (1) of Act VII. of 1908. A thinly veiled glorification of rebellion implying a desire on the part of the writer

Printing Press (*contd.*)—

that there should be a successful rebellion, though it may amount to sedition under s. 124 A of the Penal Code, is not sufficient to bring the case within s. 3 (1) of the Act. There must be something more direct and specific for that purpose. In the case of two prisoners, regarding the guilt of one of whom only the Judges of the Appellate Court are divided in opinion, it may be that what has to be laid before another Judge is the case of such prisoner alone. But where they are equally divided as to the guilt of one accused, though in certain aspects they may be agreed, the whole case as regards the accused is laid before the third Judge, and not merely the point or points on which there is a difference of opinion, and it is his duty to consider all the points involved before delivering his opinion upon the case.—SARAT CHANDRA MITRA *v.* EMPEROR, I. L. R., 38 Cal. 202.

Prisons Act—

PRISON—(*Act IX. of 1904*), *s. 52*—*Presidency Magistrate not a District Magistrate or Magistrate of the first class within s. 52 of the Act.*] A Presidency Magistrate is not a District Magistrate or Magistrate of the first class within the meaning of s. 52 of the Prisons Act and he has no jurisdiction to try prisoners for offences under that section.—EMPEROR *v.* CHOTA SINGH, 32 Mad. 303.

Private Defence—

1. PRIVATE DEFENCE—*Penal Code, ss. 99 353*—*Assaulting public servant in the execution of his duty*—*Vaccinator attempting to vaccinate a child forcibly*—*Right of private defence.*] A Vaccinator attempted to vaccinate a child against the wishes of its father. The father and some of his relations intervened and assaulted the vaccinator, but did not do him any particular harm. *Held* that the child's father and other relations were perfectly justified in interfering, and, under the circumstances, could not be said to have acted in excess of their right of private defence *Mangobind Muchi* v. *Empress* (3 C. W. N. 627) followed.—EMPEROR *v.* BAHAL, I. L. R., 28 All. 481; 3 A. L. J. 327.

2. PRIVATE DEFENCE,—*Right of*—Party A sowed a crop in a field to the possession of which apparently they were entitled. Party B, claiming the field and the crop as theirs, entered upon the land, and began to cut the crop. Party A, having watched party B enter upon the land, took counsel together, and then proceeded to attack party B, and a fight ensued in which grievous hurt was caused. *Held* that it was not open to party A to plead that they were acting in the exercise of their right of

Private Defence (*contd.*)—

private defence of property *Queen-Empress* v. *Prag Dat* (I. L. R., 20 All. 459) followed. *Queen-Empress* v. *Narsang Pathabhai* (I. L R., 14 Bom. 441) distinguished. *Pachkauri* v *Queen-Empress* (I. L. R., 24 Cal. 686) not followed.—KING-EMPEROR *v.* KALIJI *alias* KALI SINGH, I. L. R., 24 All. 143.

3 PRIVATE DEFENCE—*Right of*—Of two parties, each of which claimed title to certain trees, one party went to cut down the trees, and went armed with *lathis*, apparently with the intention of resisting anticipated opposition on the part of the other claimants. The other party attempted to stop the cutting down of the trees and a fight ensued, in the course of which several people were injured. *Held* that the first party were guilty of rioting, and, whatever their title to the trees was, could not claim that they had acted in the exercise of the right of private defence.—EMPEROR *v.* KADHU SINGH, I. L. R., 24 All. 298.

4. PRIVATE DEFENCE, — *Right of*—The view, that a person should not exercise his right of self-defence if, by running away, he can avoid injury from his assailant, places a greater restriction on the right of private defence of the body than the law requires. The extent to which the exercise of the right will be justified will depend, not on the actual danger, but on whether there was reasonable apprehension of such danger.—ALINGAL KUNHINAYAN *v.* EMPEROR, I. L. R., 28 Mad. 454.

5. PRIVATE DEFENCE—*Right of—Rioting—Assembly of armed men prepared for fight—Penal Code* (*Act XLV. of 1860*), *Misdirection to jury.*] There is no right of private defence where two parties arm themselves for a fight to enforce their right or supposed right, and deliberately engage in large numbers in a fight. In such a case, if it is not shown that the accused were acting within the legal limits of the right of private defence, it does not matter which party was the first to attack. *In re Kalee Beparee*, 1 C. L. R., 521, and *Jairam Mahton* v. *Emperor*, I. L. R., 35 Cal. 103, followed.—KABIRUDDIN *v.* EMPEROR, I. L. R., 35 Cal. 368.

6. PRIVATE DEFENCE—*Right of—Rioting—Attack by a large body of armed men prepared to fight—Penal Code* (*Act XLV. of 1860*) *ss. 96 to 106, 147,* $\frac{325}{149}$.] The complainant's party, consisting of twelve or thirteen persons, went with *kodalis* to a *bund* erected on the land of the master of the accused in order to cut, as it obstructed the flow of water from their lands and destroyed their crops. The accused hearing of this at once assembled to the number of 50 or 60, armed themselves with *lathis* and proceeded to the *bund*. At this time the complainant's party had either finished the cutting or ceased to do so, when they saw the accused approaching. The latter attacked the complainant's party and drove them to their village. One or more of the assailants also beat a man, who was present there, but was not connected with the cutting of the *bund*, both in the first attack and when they returned from the chase, and fractured his skull, in consequence of which he died shortly after:—*Held*, that the accused were members of an uulawful assembly from the beginning, as they went armed with *lathis* and in large numbers to enforce their right at all hazards, that, if not so at the beginning, they became an unlawful assembly, and had no right of private defence, when the opposite party had ceased cutting the *bund*, and that, even if they had, they exceeded their right by attacking their opponents and chasing them and by beating the deceased. *Shunker Sing* v. *Burmah Mahto*, 23 W. R. Cr. 25, *Pachkauri* v. *Queen-Empress* (I. L. R., 24 Cal. 686), distinguished. *Kabiruddin* v. *Emperor*, I. L. R., (35 Cal. 368, 12 C. W. N. 384), followed.—EMPEROR *v.* AMBIKA LAL, I. L. R., 35 Cal. 443.

7. PRIVATE DEFENCE,—*Right of—Common object, as found by Trying and Appellate Courts—Penal Code (Act XLV. of 1860) ss. 96—106*] No right of private defence arises where a large body of men go armed and prepared for a fight, and attack the opposite party with intent to enforce their right or supposed right to certain land. The petitioners numbering from forty to sixty, armed with *lathis*, spears and heavy billets of wood, proceeded to the disputed land, attacked the complainant and his father, and destroyed the crops growing thereon. Both parties claimed the land as having fallen to their shares on partition. The Magistrate found that the complainant was in possession and had grown the crops:—*Held*, that the right of private defence did not arise, as there was no invasion of the petitioner's rights on the day of occurrence, and, in any case, that they had ample time to have recourse to the authorities for the protection of their rights. Where the accused were charged with rioting with intent to dispossess the complainant, but the Appellate Court thought the question of possession not clear and found them guilty of rioting with the intention of enforcing their right or supposed right:—*Held* that both common objects raised the same questions, and that the accused were in no way prejudiced.—MANIRUDDIN *v.* EMPEROR, I. L. R., 35 Cal. 384.

Proclamation—

PROCLAMATION — *Criminal Procedure Code (Act V. of 1898), ss. 87, 88, 89—Absconding offender—Proclamation and attachment—Sale of attached property—Title of purchaser.*] Where property was attached and sold as property of a proclaimed offender under ss. 87 and 88 of the Criminal Procedure Code, it was *held* that, although the proclamation was irregular, yet the property having vested in third parties, strangers to the proceedings in which the proclamation was made, the sale could not be set aside.—ABDULLAH *v.* JITU, I. L. R., 22 All. 216.

Prohibitory Order—

PROHIBITORY ORDER—*Excavation of a tank—Injury to adjoining house—Likelihood of a breach of the peace—Order passed on personal apprehension of the Magistrate without evidence taken or urgency recorded—Criminal Procedure Code (Act V. of 1898) s. 144*] The petitioner excavated a tank on his own land, adjoining the house of the opposite party, and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe. No likelihood of a breach of the peace appeared from the police report or the written statements of the parties, but the Magistrate made the order under s. 144 of the Criminal Procedure Code without inquiry or recording any urgency: *Held*, that the order was illegal, and that s. 144 was not applicable without inquiry or recording any urgency.—KAMINI MOHAN DAS GUPTA *v.* HARENDRA KUMAR SARKAR I. L. R., 38 Cal. 876.

Prosecution—

1. PROSECUTION—*Calcutta Municipal Act (Beng. III of 1899) ss. 559 (18), 561 (b), 631—Noncompliance with notice to remove encroachment on public street—Institution of prosecution more than three months after expiry of notice—Limitation—Continuing offence—Bye-laws, validity of—Ultra vires.*] A prosecution for failure to comply with a notice by the Chairman to remove an obstruction on a public street, instituted more than three months after the expiry of the date fixed therein, is barred under s. 631 of the Calcutta Municipal Act. A Bye-law must conform to the provisions of the law under which it purports to be made. Rule (1) of the Bye-laws framed under s. 559 (18) of the Act is *ultra vires*, in so far as it creates a continuing breach after notice fn violation of the terms of s. 561 (*b*).—NARAIN CHANDRA CHATTERJEE *v.* CORPORATION OF CALCUTTA, I. L. R., 37 Cal. 545.

2. PROSECUTION—*Order for—Jurisdiction—Criminal Procedure Code (Act V. of 1898) s. 476—Prosecution for offence committed before predecessor in office—Practice.*] The petitioner swore an affidavit, making certain allegations against a peon, in a suit pending in the Court of the Additional Munsif of R., who ordered an enquiry. On the transfer of that officer, the suit was made over to the 2nd Munsif, and the enquiry was continued by the 1st Munsif of the place who under s. 476 of the Criminal Procedure Code ordered the prosecution of the petitioner for making a false affidavit:—*Held*, that the affidavit having been filed before the additional Munsif, the 1st Munsif had no jurisdiction to make the order. *Begu Singh* v. *Emperor*, (I. L. R., 34 Cal. 551,) followed. *Runga Ayyar* v. *Emperor*, I. L. R., 29 Mad. 331, not followed.—KARTIK RAM BHAKAT *v.* EMPEROR, I. L. R., 35 Cal. 114.

3. PROSECUTION—*Limitation — Calcutta Municipal Act (Beng. III. of 1899), ss. 408, 419, 574 and 631—Bustee improvement—Notice—Date of offence—Subsequent notice under s. 419—Extension of time by Corporation.*] Where a notice under s. 408 of the Calcutta Municipal Act was served on the owner of a *bustee* on the 3rd March 1906, directing certain improvements within three months from its date, but the owner failed to comply with it and served a notice under s. 419 of the Act on the 2nd July, whereupon the Corporation gave her further time till the 2nd January 1907, and instituted a complaint on the 23rd January for non-compliance with the terms of the notice of the 3rd March 1906:—*Held*, that the three months having expired on the 2nd June 1906, the offence was committed on the next day, and the prosecution was, therefore, barred under s. 631; and that the notice under s. 419 and the extension of time by the Corporation, both being after the date of the offence, were ineffectual in extending the period of limitation.—KUMUD KUMARI DASSI *v.* CORPORATION OF CALCUTTA, I. L. R., 34 Cal. 909.

4. PROSECUTION — *Commencement of.*] *Held* that a prosecution commences when a complaint is made. It is not necessary, in order to maintain an action for malicious prosecution, that the charge was acted upon by the Magistrate; it is enough if the charge was made to the Magistrate with a view of inducing him to entertain it.—AHMEDBHAI *v.* FRAMJI EDULJI, I. L. R., 28 Bom. 226.

5. PROSECUTION—*Order for — Criminal Procedure Code (Act V. 1898), s. 476—Indian Penal Code, (Act XLV. of 1860)*

Prosecution (*contd.*)—

ss. 114, 119, 193 and 210—Cognisance in the course of a judicial proceeding—Jurisdiction—Judicial proceedings—Execution proceedings.] The powers conferred by s. 476 of the Criminal Procedure Code can only be exercised if the offences in respect of which a prosecution is ordered have come to the cognizance of the Court in a judicial proceeding. Execution proceedings subsequent to the trial of a suit are not judicial proceedings. *Hara Charan Mookerjee* v. *Emperor*, (I. L. R., 32 Cal. 367,) followed. *Begu Singh* v. *Emperor*, I. L. R, 34 Cal. 551. *Dharmadas Kamar* v. *Sagore Santra*, 11 C. W. N. 119, and *Emperor* v. *Molla Fuzla Karim*, I. L. R., 33 Cal. 193, referred to.—KANTO RAM DAS *v.* GOBARDHAN DAS, I. L. R., 35 Cal. 133.

Public Gambling Act—

1. PUBLIC GAMBLING—*(Act III. of 1887), s. 5—Jurisdiction—Power to issue search warrant—'Officer invested with the full powers of a Magistrate"—Sub-divisional officer issuing warrant for search outside his subdivision*]. *Held* that a search-warrant issued under s. 5 of the Public Gambling Act 1867, by a first class magistrate was not invalid by reason of the fact that the house to be searched was situated outside the limits of the tahsils in respect of which such Magistrate had been appointed Sub-divisional officer.—EMPEROR *v.* ABBU SINGH, I. L. R., 34 All. 597.

2. PUBLIC GAMBLING—*(Act III. of 1867), s. 12—'Mere game of skill"—Game of chance.*] *Held* that a game which is in fact only to a very slight extent a game of skill and almost entirely a game of chance is not a game which is excluded by reason of s. 12 of the Gambling Act, 1867, from the previous provisions of that Act. *Hari Singh* v. *King-Emperor*, 6 C. L. J. 708, distinguished.—EMPEROR *v.* AHMAD KHAN, I. L. R., 34 All. 96.

Public Nuisance—

1. PUBLIC NUISANCE—*Penal Code (Act XLV. of 1860), ss. 268, 290—Soliciting for purposes of prostitution.*] *Held* that the soliciting for purposes of prostitution of passers by on a public road is not a public nuisance, as that term is defined in s. 268 of the Penal Code.—QUEEN-EMPRESS *v.* NANNI, I. L. R., 32 All. 113.

2. PUBLIC NUISANCE—*Claim of title to land—Bona fides of claim—Limitation, question of—Criminal Procedure Code (Act V. of 1898) s. 133.*] Where a party, against whom a conditional order under s. 133 of the Criminal Procedure Code is passed for an alleged obstruction or nuisance on land, raises a claim of title to such land, the Magistrate must come to a proper finding as to the question of *bona fides* of the claim; and he is not competent to decide whether it is barred by limitation.—KAMINI KUMAR BISWAS *v.* EMPEROR, I. L. R., 35 Cal. 283.

Public Nuisance (*contd.*)—

3. PUBLIC NUISANCE—*Obstruction of ford by erection of bund—Prescriptive right of public to user of ford—Desuetude of right to erect bund—Use of one's right so as not to cause obstruction or nuisance—Criminal Procedure Code (Act V. of 1898) s. 133*] Where the petitioner erected a *bund* in a river, the effect of which was to render it unfordable at a place where the stream had been fordable throughout the year, except for a few days during the freshets, and claimed the right to do so, but it was proved that for a period exceeding 20 years the public had used the ford, and had never been so obstructed in crossing the river on feet or on vehicles: *Held*, that the public had acquired a prescriptive right of way through the river and that the petitioner had lost his right of erecting a *bund* by long desuetude; that even if the petitioner had a subsisting right to dam the river by a *bund*, such right was subject to the maxim *sic utere tuo ut alienum non laedas;* that his action had caused an obstruction, which was not justifiable to the public who were in the lawful enjoyment of a right of way and that the Order of the Magistrate to remove the obstruction was not illegal.—ZAFFER NAWAB *v.* EMPEROR, I. L. R, 32, Cal. 930

4. PUBLIC NUISANCE—*Public way, obstruction in—Bona fide claim of title—Reasonable and proper order—Jury—Verdict—Criminal Procedure Code (Act V. of 1898) ss. 133, 139.*] Where in a proceeding under s. 133 of the Criminal Procedure Code the opposite party, in showing cause why an obstruction should not be removed from a public way, alleged that the way was the private property of his employer and asked for a jury to be appointed, and the Magistrate instead of first satisfying himself as to the *bona fides* of the claim referred the following question to the jury:—"Is there a public right-of-way at the points where stand the buildings whose removal has been ordered?" *Held*, that this was not a proper reference. What the jury had to try was whether the Magistrate's order was reasonable and proper.—MATUK DHARI TEWARI *v.* HARI MADHAB DAS, I. L. R. 31, Cal. 979.

5. PUBLIC NUISANCE—*Criminal Procedure Code (Act V. of 1898), s 133—Nuisance—Encroachment upon unmetalled portion of a Government road.*] *Held* that any obstruction upon a public road is a

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nuisance within the meaning of s. 133 of the Code of Criminal Procedure, whether in point of fact it causes practical inconvenience or not.—QUEEN-EMPRESS *v.* KEDAR NATH, I. L. R., 23 All. 159.

6. PUBLIC NUISANCE — *Indian Penal Code (Act XLV. of 1860), s. 268 and s. 290.*] In order to constitute an offence under s. 268 of the Penal Code it is not necessary that the alleged nuisance should produce smells injurious to health, it is sufficient if they be offensive to the senses. *Rex* v. *Neil*, 2 C. & P. 485, approved of. To allow a large stack of bones to remain uncovered in the open for a long time so as to become rotten and to emit a smell noxious to people living in or passing by the vicinity is not an act which a bonemill manager is entitled to do in carrying on his trade in a reasonable way and by allowing such act to be done he would be guilty of committing a public nuisance.—BERCKEFELD *v.* EMPEROR, I. L. R., 34 Cal. 73.

7. PUBLIC NUISANCE — *Right to sue — Special damage—District Police Act (Bombay Act IV. of 1890), s. 44—Orders by District Magistrate — Religious assemblies, orders at—Music, rights to play.*] No individual or class of individuals can sue in respect of a public right unless the obstruction caused has resulted in special damage. The Bombay Police Act (IV of 1890) is not intended to confer any right upon any individual or class of His Majestys' subjects which had not been given by the common law. The Act was passed in the interest of public peace.—VIRUPANAPPA FAKIRAPPA *v.* SHERIFF SAB MULLA MASUD SAB, 11 Bom. L. R. 372; 2 Ind. Cas. 494.

8. PUBLIC NUISANCE—*Killing of cows by Muhammadans—Custom.*] Under certain limitations the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property as he may think fit, provided that in so doing he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interferred with. *Muttumira* v. *Queen-Empress*, I. L. R., 7 Mad. 590, *Queen-Empress* v. *Byramji Edalji*, I. L. R, 12 Bom. 437. *Queen-Empress* v. *Zaki-ud-din*, I. L. R., 10 All. 44, *Queen-Empress* v. *Imam Ali*, I. L. R., 10 All. 150, *Romesh Chunder Sannyal* v. *Hiru Mondal*, I. L. R., 17 Cal. 852, and *Hadjee*

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Muzhur Ali v. *Gundowree Sahu*, 25 W. R. Cr. R., 72, referred to.—SHAHBAZ KHAN *v.* UMRAO PURI, I. L. R., 30 All. 181.

Public Servant—

1. PUBLIC SERVANT—*Public Servant, receiver appointed under Land Registration Act, whether a — Non-attendance in obedience to order from public servant—Omission to produce document to public servant —Obstructing public servant in discharge of public functions—Disobedience to order duly promulgated by public servant—Persuasion to tenants not to pay rent to Receiver —Penal Code (Act XLV. of 1860), ss. 174, 175, 186, and 188—Land Registration Act (VII. B. C. of 1876), s. 56.*] *Held*, that a Receiver appointed under s. 56 of the Land Registration Act is not a public servant within the terms of ss. 174, 175, 186, and 188 of the Penal Code. *Held*, further, that such a Receiver was not a public servant legally competent to issue an order directing persons to attend before the Collector with their collection-papers and rent-receipts, and that disobedience to such an order did not constitute an offence either under s. 174 or s. 175 of the Penal Code. *Held*, also, that an order by such a Receiver forbidding persons to pay rent to any person other than the Receiver was not an order promulgated by a public servant lawfully empowered to promulgate such order, and that disobedience to such order was not an offence within the terms of s. 188 of the Penal Code. *Held*, further that persuasion addressed to tenants in the absence of such Receiver not to pay rent to him was not an obstruction of the Receiver within the provisions of s. 186 of the Penal Code.—EBRAHIM SIRCAR *v.* EMPEROR, I. L. R., 29 Cal. 236.

2. PUBLIC SERVANT—*Order promulgated by—Hâts — Disobedience — Breach of the peace—Penal Code (Act XLV. of 1860), s. 188—Criminal Procedure Code (Act V. of 1898) s. 144.*] Although a Magistrate acting under s. 144 of the Criminal Procedure Code is empowered to make an order prohibiting a person from holding a *hât* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hât* shall be held upon certain days, leaving the party no option to hold his *hât* upon some other days than those on which his rival holds his *hât*. Before a person can be convicted under s 188 of the Penal Code for having disobeyed an order passed by a Magistrate under s. 144 of the Criminal Procedure Code, there must be some evidence on the record showing that the disobedience of the Magistrate's order was likely to lead to a

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breach of the peace.—SHYAMANAND DAS PAHARAJ *v.* EMPEROR, I. . R., 31 Cal. 990

3. PUBLIC SERVANT — *Clerk to a Sub-Registrar — Illegal gratification — Penal Code (Act XLV. of 1860) ss. 21, 161—Registration Act (III. of 1877) ss. 6 to 14, 69, 84.*] A clerk appointed by a Sub-Registrar and paid out of an allowance given to the Sub-Registrar, is not a "public servant" within the meaning of s. 21 of the Penal Code.—BHAGWATI SAHAI *v.* EMPEROR, I. L. R , 32 Cal. 664.

4. PUBLIC SERVANT—*Salt Department—Peon attached to office of Superintendent of the Salt Department—Manager of Estate under Court of Wards—Penal Code (Act XLV. of 1860) s. 21, cl. (9).*] An officer in the service or pay of Government within the terms of s. 21. cl. (9) of the Penal Code is one who is appointed to some office for the performance of some public duty. *Held* that a peon in the service and pay of Government and attached to the office of a Superintendent of the Salt Department is a public servant. *Held*, further, that a Manager of an estate under the Court of Wards is not a public servant. *Reg.* v. *Ramajirav Jivbajirav* (12 Bom. H. C. R. 1) and *The Queen* v. *Arayi* (I. L. R., 7 Mad. 17) referred to; *Queen Empress* v. *Mathura Prasad* (I. L. R., 21 All. 127) dissented from.—NAZAMUDDIN *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 344.

5. PUBLIC SERVANT—*Held* that a *gorait* is a public servant within the meaning of sections 21 and 99 of the Indian Penal Code.—EMPEROR v. SIDHU, I. L. R., 26 All. 542.

6. PUBLIC SERVANT—*Assaulting a.*]—A police constable, at midnight, entered upon the premises of a person who was regarded by the police as a suspicious character, and knocked at his door to ascertain if he was there, whereupon he came out, and abused and pushed the constable, and lifted a stick as if he were about to hit the constable with it. On a complaint being preferred under section 353 of using criminal force to deter a public servant in the execution of his duty, *held* that the offence had not been committed. The constable was not engaged in the execution of his duty as a public servant, and was technically guilty of house trespass, and his action was calculated to cause annoyance to the inmates of the house, and was insulting to the accused, who was justified in causing the slight harm which he had inflicted on the constable. The latter could not be regarded, under section 99 as acting in good faith under colour of his office, as his action was not authorized by any police circular

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or order.—DORASAMY PILLAI *v.* EMPEROR I. L. R., 27 Mad. 52.

7. PUBLIC SERVANT—*Assault to deter a.*]—A rule in the Police Code to the effect that, when any *surveille* is at home, proof of his presence can be secured by taking a thumb-impression on the report, does not impose any obligation on the *surveille* to give the thumb impression, and he cannot be forced to do so. Before an act can amount to an assault under section 351 of the Penal Code, it is necessary that a gesture or preparation should he made by a person which would cause another to apprehend that the person was about to use criminal force to him then and there. A preparation taken with words which would cause him to apprehend that criminal force would be used to him if he persisted in a particular course of conduct does not amount to an assault. Where a *surveille*, on a domiciliary visit being paid to him by a police-officer, refused to allow his thumb-impression to be taken, and, on the officer attempting to take it, produced a *lathi* saying he would not allow the impression to be taken, and, if any one asked for it, he would break his head *held* that the act of the *surveille* did not amount to an assault, and that his conviction under section 353 of the Penal Code should be set aside. *Held*, further, that, if his act had in itself amounted to an offence, section 99 of the Penal Code would apply.—BIRBAL KHALIFA *v.* EMPEROR, I. L. R., 30 Cal. 97.

8. PUBLIC SERVANT—*Disobedince of order promulgated by.*] A person was called upon by an Abkari Inspector to attend a search held under section 103 of the Code of Criminal Procedure, and did so. He, however, refused to sign the search-list when it was prepared. On a charge being preferred against him under section 187 of the Indian Penal Code of intentionally omitting to assist a public servant in the execution of his duty, *held* that the accused was not guilty of an offence under section 187. Assuming that a person, called upon to attend and witness a search, under section 103 of the Code of Criminal Procedure, is under a legal obligation to attend the search and sign the search-list, the "assistance" which a person is bound, by the earlier part of section 187 of the Penal Code, to render is *ejusdem generis* with the various forms of assistance referred to in the latter part of the section. It must have some direct personal relation tb the execution of the duty by the public officer. The signing of the search-list required by section 103 is an independent duty which is

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imposed on the witness, whereas the word "assistance," as used in the section, implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself.—IN THE MATTER OF RAMAYA NAIKA, I. L. R., 26 Mad. 419.

9. PUBLIC SERVANT — *Disobedience of order, promulgated by.*] Where certain persons taking part in a religious procession gratuitously disobeyed the orders of the police concerning the manner in which such procession was to be conducted, with the result that a riot was only averted by bringing armed police upon the scene, it was *held* that the persons concerned acted — though not "malignantly," yet "wantonly" within the meaning of section 153 of the Indian Penal Code, and were properly convicted under that section.—EMPRESS *v.* HUSAIN BAKSH, I. L. R., 29 All. 569.

10. PUBLIC SERVANT—*Land-mark fixed by.*] The parties to a proceeding under s. 145 of the Criminal Procedure Code, by mutual consent referred the dispute as to the possession to the arbitration of A, and the Magistrate thereupon cancelled the proceedings under s 145. The arbitrator, in order to define the boundary, erected certain pillars, which were destroyed by the accused, and they were in consequence convicted under s. 434 of the Penal Code, *Held* that the conviction was illegal, as A was not an arbitrator within the definition of s. 21 cl. 6 of the Penal Code nor was he a public servant authorized to fix the pillars within the meaning of s. 434 of the Code.—SUNDER *v.* EMPEROR, I. L. R., 30 Cal. 1084.

11. PUBLIC SERVANT—*Land-mark fixed by.*] A Magistrate making an order under s. 145 has no authority to cause the property, which is subject of a dispute likely to occasion a breach of the peace, to be demarcated by boundary pillars, and consequently if he does so, a person destroying or removing such boundary pillars is not liable to conviction under s. 434 of the Indian Penal Code.—EMPEROR *v.* RAMESHAR, I. L. R., 27 All. 300.

12. PUBLIC SERVANT—*Personating a.*] *Held* that to constitute the offence provided for by s 170 of the Indian Penal Code, it is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. *Queen-Empress* v. *Wazir Jan*, (I, L. R., 10 All. 58) referred to.—*Emperor* v. *Asis-un-din*, I. L. R,, 27 All. 294.

13. PUBLIC SERVANT — *Resistance to.*] S. 251 of the Code of Civil Precedure requires the Court to specify in a warrant for

Public Servant (*contd.*)—

execution of decree the day on or before which the warrant must be executed. A Commissioner attemptiug to give possession under a time-expired warrant, has no authority to go upon land in the possession of the party, who resists the execution.—ABINASH CHANDRA ADITYA *v.* ANANDA PAL, I. L. R., 31 Cal. 424.

14. PUBLIC SERVANT — *Resistance to.*] Where resistance was made to the execution of a warrant issued by a Civil Court for the attachment of the moveable property of the judgment-debtor, the warrant being general in its terms, and not purporting on the face of it to authorize the seizure of the property of the judgment-debtor, nor giving the peon executing it authority to enter his house, nor containing the name of the judgment-debtor, *held* that the warrant was not one which could be lawfully executed against the judgment-debtor, and that resistance to the execution of such warrant did not constitute an offence under s. 147 of the Penal Code. *Held*, further, where one of the party resisting the execution had exceeded his rights, and inflicted a severe injury on one of the opposite party, that his conviction of an offence under s. 325 of the Penal Code was lawful. *Held*, also, that s. 141, cl. (*2*), of the Penal Code, does not have the effect of making an assemblage of persons an unlawful assemblage if the object with which they assembled was a perfectly legal one.—*Uma Charan Singh* v. *Emperor*, I. L. R., 29 Cal. 244.

15. PUBLIC SERVANT — *Resistance to.*] *Held* that a Receiver appointed under s. 56 of the Land Registration Act is not a public servant within the terms of s. 174, 175, 186, and 188 of the Penal Code. *Held*, further, that such a Receiver was not a public servant legally competent to issue an order directing persons to attend before the Collector with their collection-papers and rent-receipts, and that disobedience to such an order did not constitute an offence either under s. 174 or s. 175 of the Penal Code. *Held*, also, that an order by such a Receiver forbidding persons to pay rent to any person other than the Receiver was not an order promulgated by a public servant lawfully empowered to promulgate such order, and that disobedience to such order was not an offence within the terms of s. 188 of the Penal Code. *Held* further, that persuasion addressed to tenants in the absence of such Receiver not to pay rent to him was not an obstruction of the Receiver within the provisions of section 186 of the Penal Code.—EBRAHIM SIRCAR *v.* EMPEROR, I. L. R., 29 Cal. 236.

16. PUBLIC SERVANT — *Resistance to.*] An Assistant Collector issued warrants for

Public Servant (*contd.*)—

the arrest of certain witnesses, for whose attendance summonses had been issued, but who had not appeared in obedience thereto. The serving officer had not been able to effect personal service of the summonses, but had affixed copies to the houses of the persons to be served. The Court, previous to issuing warrants, did not comply with the provisions of s. 82 of the Code of Civil Procedure, though it was apparently of opinion that there had been due service of the summonses. The officers charged with the execution of the warrants arrested one of the witnesses, but they were attacked by N and others, and the man they had arrested was rescued. N was convicted under ss. 225B and 353 of the Indian Penal Code. *Held* that, even if section 225B was not applicable, the conviction under s. 353 of the Code was perfectly justified.—EMPEROR *v.* NARBADESHWAR, I. L. R., 27 All. 491.

17. PUBLIC SERVANT—*Resistance to*—It is the intention of the law that, when a public servant attaches property under a warrant in execution of a decree, he must have the warrant with him, otherwise the taking of the property is not lawful. *Empress of India* v. *Amar Nath* (I. L. R., 5 All. 311) referred to.—EMPEROR *v.* GANESHI LAL, I. L. R., 27 All. 258.

18. PUBLIC SERVANT—*Resistance to*—A Magistrate issued a proclamation under s. 87 of the Criminal Procedure Code and an order of attachment, under s. 88, of the property of certain absconding accused persons. During the attachment, an objection was raised that the property being attached did not belong to the absconders. The police-officer, on being informed by the patwari that it was their property, continued the attachment. A mob, among whom were the accused, assembled, and, by assuming a threatening attitude, prevented the police-officer from further attaching the property. *Held*, the conviction of accused under ss. 143 and 183 of the Penal Code was right. *Held*, further, that, even supposing the property attached was not the property of the absconders, the rightful owner had no right of private defence of his property, inasmuch as the evidence showed that the police officer was acting in good faith under colour of his office; and, even supposing the order of attachment might not have been properly made, that would in itself be no sufficient ground for such a defence.—BHAI LAL CHOWDHRY *v.* EMPEROR, I L. R. 29 Cal. 417.

19. PUBLIC SERVANT — *Resistance to*—The law as laid down in Chapter IX. of the Agra Tenancy Act, 1901, does not authorize

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the adjournment of a sale of distrained property owing to the absence of bidders. Hence, where, for this reason, an amin adjourned a sale and fixed a fresh date, and obstruction was offered to the sale so adjourned, it was *held* that the persons so obstructing the sale could not be convicted under s. 184 of the Indian Penal Code.—EMPEROR *v.* TARA SINGH, I. L. R., 27 All. 480.

20. PUBLIC SERVANT — *Resistance to*—Where, under a written order signed by a Tashildar, the Naib Nazir was directed to realize certain canal dues, and he, on attempting to do so by attachment and sale of the defaulter's property, was resisted by the owners of the property, it was *held* that the conviction of the persons offering resistance under s. 186 of the Indian Penal Code was good. The Tashildar's order, though not of a formal nature, was sufficient evidence that the Naib Nazir was acting as a public servant in the discharge of his duty. *Held* also that the appointment of lambardars does not preclude the Revenue authorities, if they think fit, from realizing canal dues from the persons by whom the dues are actually payable. *Queen-Empress* v. *Poomalai Udayan* (I. L. R., 21 Mad. 296) referred to.—EMPEROR *v.* ABDULLAH, I. L. R., 27 All. 499.

Public Street—

PUBLIC STREET — *Right to carry Religious Processions in — Custom — Right to obstruct such processions not claimable on the ground of usage or custom—When proof of damage necessary in suit brought for obstruction of procession*] Persons of all sects and creeds are equally entitled to carry religious processions along public streets and thoroughfares and no particular sect can claim, on the ground of custom or immemorial use, an exclusive right to carry processions through such streets. The exercise of such right must not interfere with the ordinary use of such streets by the public and must be subject to such directions as the Magistrate may lawfully give to prevent obstructions of thoroughfare or breaches of public peace *Sadagopachariar* v. *Krishna Moorthy Rao* (I. L. R., 30 Mad. 185 at 190), referred to. An action for obstructing a procession may not be maintainable without proof of special damage. Where, however, an illegal order of the Magistrate has been procured restraining such procession, a suit to declare the right to carry such procession is sustainable without such proof, the cause of action being the improper order so obtained by the defendants —KANDASAMI MUDALI *v.* SUBROYA MUDALI, 32 Mad. 478.

R.

RAILWAY COLLISION—*Endangering safety of persons—Death by rash or negligent act — Contributory Negligence — Indian Penal Code (Act XLV. of 1860). s. 304A.— Indian Railways Act (IX. of 1890) s. 101.*] The Bengal-Nagpur Railway is worked on the "line clear and caution message" system, no train being allowed to leave a station without a "line clear" certificate, in a prescribed form, to the effect that the line is clear up to the next station. The petitioner, the assistant station-master of Gomharria Station, who was on duty and busy issuing tickets to passengers, wrote out in the prescribed form-book the following conditional line clear message, although he had received no message from Sini Station: "on arrival of 15 down passenger at Gomharria, line will be cleared for No. 80 up goods train from Gomharria to Sini." All the particulars required by the rule were not filled in, no number was entered on it, nor was the time of arrival of the train filled in. The form-book was left in the station master's room The guard of No. 80 up goods train which was waiting at Gomharria entered the station-master's room in his absence, took the imperfect certificate out of the book and without reading it appended his signature, passed it on to the driver and gave the signal for the train to start,—all without the knowledge of the petitioner. The result was a collision between the 15 down passenger train and the 80 up goods train causing the death of several persons. The petitioner was convicted under s. 304A of the Penal Code and s. 101 of the Indian Railways Act of 1890, and sentenced to rigorous imprisonment:—*Held*, that the act of the petitioner did not in itself endanger the safety of other persons, and that the effect was too remote to be attributable to such a cause. *Sant Dass* v. *The Empress*, Ind. Ry. Cas. 722, followed. SHANKAR BALKRISHNA *v.* KING-EMPEROR, I L. R. 32 Cal. 73.

Railways Act—

1. RAILWAYS—*(Act IX. of 1890), s. 7— City of Bombay Municipal Act (Bom. Act III. of 1888), sec. 394—Use by Railway Company of its premises for storing timber —License from the Municipal Commissioner for the use not necessary.*] The Agent of the G. I. P. Railway Company having been charged in the Presidency Magistrate's Court at the instance of the Bombay Municipality under section 394 (1) (*d*) of the City of Bombay Municipal Act (Bom. Act III. of 1888) with having used the Company's premises for storing timber without a license granted by the Municipal Commissioner, the Presidency Magistrate recorded evidence and referred the following question under section 432 of the Criminal Procedure Code (Act V. of 1898):—"Do the statutory powers given to the Railway Company (section 7 of the Indian Railways Act IX. of 1890) preclude the necessity of obtaining a license from the Municipal Commissioner, to use premises in such a manner as is necessary for the convenient making, altering, repairing and using the Railway?" *Held*, that no such license was necessary. Section 7 (1) of the Indian Railways Act (IX. of 1890) authorizes the Railway Administration to do all acts necessary for the convenient making, maintaining, altering, repairing and using the Railway notwithstanding anything in any other enactment for the time being in force. The storing of timber was necessary for the convenient making, &c., of the Railway line. Under section 7, sub-section 2 of the Indian Railways Act (IX. of 1890) the Governor-General in Council and not the Municipal Commissioner has the control of the Railway Administration in the exercise of its powers under sub-section 1.—MUNICIPAL COMMISSIONER OF BOMBAY *v.* G. I. P. RAILWAY COMPANY, 34 Bom. 252.

2. RAILWAYS—*(Act IX. of 1890), s. 110 —"Compartment"—Meaning of the word.*] *Per* JENKINS, *C.J.*, and CANDY, *J.*:—Good sense requires that, to the word "compartment" in certain sections of the Railways Act (IX. of 1890), the quality of complete separation should be attributed, and it is with that force that it is used in s. 110. *Per* RANADE, *J.*—The word "compartment" is used in s. 110 of Act IX. of 1890 in the same sense in which it is used throughout the Act, and does not necessarily mean a completely partitioned division.—*In re* DADABHAI JAMSEDJI, I. L. R., 24 Bom. 293.

3. RAILWAYS—*(Act IX of 1890), s. 111. —Starting train without line clear.*] F. the fireman of a goods train, started the train without proper authority and without "line clear." He drove the train for 4 miles along the main line which was a single one and met another goods train, which was coming from the opposite directions. Both the trains were stopped at a distance of about 300 yards of each other and thus a collision was avoided. *Held* that F. had endangered the safety of persons in both the trains and so was guilty under s. 101 of the Railway Act—FAZAL DIN *v.* KING-EMPEROR, 13 P. R. 1906, Cr.

4. RAILWAYS—*(Act IX. of 1890) s. 125— Cattle left in charge of keepers allowed to stray on a railway line—Liability of owner.*] The

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owner of cattle which have been allowed to stray upon a railway in consequence of the negligence of the person actually in charge of them on the owner's behalf is not liable to punishment under section 125 (1) of the Indian Railways Act, 1890. *Queen-Empress* v. *Andi*, I. L. R., 18 Mad., 228, followed.—EMPEROR *v.* GUR PRASAD GIR, I. L. R., 34 All. 1.

Receiving Stolen Property—

RECEIVING STOLEN PROPERTY — *Penal Code, s. 411 — Evidence — Conclusiveness.*] Where the accused was found in possession of stolen ornaments three days after the theft, he being distantly related to the thief, and he disposed of the thing in a way gravely suspicious, it was *held* that the evidence was not conclusive.—ASWINI KUMAR ROY *v.* THE EMPEROR, 10 C. W. N. 219.

Recognizance to keep the Peace—

RECOGNIZANCE TO KEEP THE PEACE—*Conviction under s. 143 of the Penal Code (Act XLV. of 1860)—Criminal Procedure Code (Act V. of 1898), s. 106.*] An offence under s. 143 of the Penal Code is not one of the offences specified in s. 106 of the Criminal Procedure Code, which would justify an order directing a person or persons to furnish security to keep the peace. There may be findings in the case which would justify such an order if such findings can be brought within the terms of s 106. *Jib Lal Gir* v. *Jogmohum Gir* (I. L. R., 26 Cal. 576) referred to. Where the accused were convicted under s. 143 of the Penal Code, and ordered under s. 106 of the Criminal Procedure Code to furnish security to keep the peace, and it was alleged that the facts as proved showed that the accused came in a body, some of whom were armed with *lathis*, and some of whom used threats, and did other acts, showing an evident intention to commit breaches of the peace, *held* that there should have been an express finding to that effect; that if the accused or any of them acted in such a manner, they should have been convicted of criminal intimidation or other offence which would enable the Magistrate to bind them over to keep the peace; and that the order under s. 106 should be set aside — SHEO BHAJAN SINGH *v.* MOSAWI, I. L. R., 27 Cal. 983.

Recurring Fine—

RECURRING FINE—*Darjeeling Municipal Act (I. of 1900), s. 147—Bye-law of Municipality — Continuing breach—Imposition of fine in advance.*] *Held*, that where, as in s. 147 of Act I. of 1900 (Local), it is directed that a breach of some law may be punished with a fine of a certain sum per diem so long

Recurring Fine (*contd.*)—

as the breach continues, it is not competent to the Court to impose such fine in advance whilst sentencing an offender in respect of the original breach; but there must be proof of the continuing breach having been committed. *Ram Krishna Biswas* v. *Mohendra Nath Mozumdar* (I. L. R., 27 Cal. 565) followed.—EMPEROR *v.* WAZIR AHMAD, I. L. R., 24 All. 309.

Reference to High Court—

REFERENCE TO HIGH COURT—*Criminal Procedure Code (Act V. of 1898), s. 307—Power of Judge in dealing with evidence.*] In making a reference under s. 307 of the Criminal Procedure Code, the Sessions Judge is limited to the evidence at the trial which was before the jury.—QUEEN-EMPRESS *v.* JADUB DAS, I. L. R., 27 Cal. 295.

Reformatory Schools Act—

REFORMATORY SCHOOLS—(*Act VIII. of 1897), ss. 8, 11, 16, 31—Rule framed by the Local Government—Youthful offender—Evidence of age—Order not properly passed—Penal Code (Act XLV. of 1860), s. 83.*] If an order for detention in a Reformatory School in substitution for transportation or imprisonment be not properly passed, a Court is not debarred by s. 16 of the Reformatory Schools Act (VIII. of 1897) from altering or reversing such order. A boy of about nine years of age was found in the grounds of the residence of the Commissioner of Patna at 3 A. M. in the morning with a brass *lota* in his hand He was tried summarily and, without any preliminary inquiry as to the age of the boy being made, was sentenced to three months' rigorous imprisonment, or, in lieu thereof, to be detained in a Reformatory School for seven years. *Held*, the accused did not come within the definition of "youthful offenders" as given in the rules framed by the Local Government under s. 8 of the Reformatory Schools Act, and the offence of the accused being his first offence, the case should have been dealt with under s. 31 of the Act. It is not that a Magistrate is under no circumstances competent to find from the appearance of a person convicted by him that he is a youthful offender, but it is generally desirable that there should be some reliable evidence on the point, and especially when it is necessary to determine the period of detention. The age of the accused being under twelve years, the Magistrate should, considering the provisions of s. 83 of the Penal Code, have found that the accused had attained sufficient maturity of understanding to judge of the nature and consequences of his act. — QUEEN-EMPRESS *v.* MAKIMUDDIN, I. L. R., 27 Cal. 133.

Refusal to Answer Questions put by Police—

REFUSAL TO ANSWER QUESTIONS PUT BY POLICE—*Criminal Procedure Code (Act V. of 1898), s. 161—Examination of witnesses by the police—Legal obligation to speak the truth—Liability to punishment under ss. 176, 179, 187 of the Penal Code.*] A refusal to answer questions asked by a police-officer under s. 161 of the Criminal Procedure Code is not punishable under ss. 176, 179, and 187 of the Penal Code.—QUEEN-EMPRESS *v.* SANKARALINGA KONE, I. L. R., 23 Mad. 544.

Re-hearing—

RE-HEARING — *Presidency Magistrate—Warrant-case — Criminal Procedure Code (Act V. of 1898), Ch. XXI.—Accused, discharge of—Case, re hearing of—Whether order of discharge a judgment.*] *Held*, by the Full Bench (GHOSE, *J.*, dissenting), that a Presidency Magistrate is competent to re-hear a warrant-case triable under Ch. XXI. of the Code of Criminal Procedure, in which he has discharged the accused person. *Held*, by GHOSE, *J.*—Where a Presidency Magistrate, by reason of the absence of the complainant, and without pronouncing any opinion as to the guilt or innocence of the accused, strikes off the case, his order is not a judgment within the meaning of the Code, and may be altered or reviewed by him upon application being made, but where the Magistrate after taking evidence, however incomplete that evidence may be exercises his judgment, and makes an order of discharge, he is not competent to review or alter it, and make further inquiry, without the order of the Superior Court. *Queen-Empress* v. *Dolegobind Dass* (I. L. R., 28 Cal. 211) and *Opoorba Kumar Sett* v. *Sreemutte Probod Kumary Dassi* (1 C. W. N. 49) approved of.—DWARKA NATH MONDUL *v.* BENI MADHAB BANERJEE, I. L. R., 28 Cal. 652.

Remand—

REMAND—*Appeal—Sessions Judge, power of—Jurisdiction — Practice.*] A Sessions Judge, while disposing of a criminal appeal, has no authority under the Code of Criminal Procedure to remand the case when the judgment of the Court below is unsatisfactory, directing it to write out a proper judgment after rehearing the parties, if they so desire. It is the duty of the Sessions Judge in such a case to go fully into the whole facts and dispose of the appeal. He cannot devolve this duty on the Court below.—TARA CHAND SINGH *v.* EMPEROR, I. L. R., 32 Cal. 1069.

Reply, Prosecutor's Right of—

REPLY, PROSECUTOR'S RIGHT OF — *Depositions of witnesses before committing Magistrate—Evidence adduced by accused—Criminal Procedure Code (Act V. of 1898) ss 162, 288, 289, 292.*] In a Sessions trial before the High Court, the accused, before he was asked by the Court under s. 289 of the Criminal Procedure Code whether he meant to adduce evidence, put in as evidence on his own behalf the depositions of certain witnesses taken before the committing Magistrate, which formed part of the record sent up by the Magistrate :—*Held*, that this could not be said to be 'evidence adduced by the accused' after the case for the prosecution had been closed, and that the prosecution was therefore not entitled to reply under s. 292.—EMPEROR *v.* ROBERT STEWART, I. L. R., 31 Cal. 1050.

Rescue from lawful custody—

RESCUE FROM LAWFUL CUSTODY — *Assault to deter public servant from discharge of duty—Arrest by duffadar for theft not committed in his presence — Theft whether a continuing offence—Penal Code (Act XLV. of 1860) ss. 225, 353 and 379—Village Chaukidari Act (Ben. VI. of 1870) s. 39. cl. (2).*] The arrest by a *duffadar* of a person for theft on complaint made to him, but not committed in his presence, is illegal under s. 39(2) of Bengal Act VI. of 1870; and neither the rescue of such person from his custody nor the threat to beat him does amount to any offence under s. 225 or s. 353 of the Penal Code. The offence of theft is not a "continuing one."—BOLAI DE *v.* EMPEROR, I. L. R., 35 Cal. 361.

Restoration of Possession of Property—

RESTORATION OF POSSESSION OF PROPERTY—*Criminal Procedure Code (Act V. of 1898) s. 522—Use of criminal force—Penal Code (Act XLV of 1860), s. 350.*] In order to support an order under s. 522 of the Criminal Procedure Code (Act V. of 1898), there must be a finding that the dispossession was by the use of criminal force as defined in s. 350 of the Penal Code. *Ram Chandra Boral* v. *Jityandria* (I. L. R., 25 Cal. 434) approved of.—ISHAN CHANDRA KALLA *v.* DINA NATH BADHAK, I. L. R., 27 Cal. 174.

Retrial—

1. RETRIAL—*Sessions Judge, Jurisdiction of—Criminal Procedure Code (Act V. of 1898), s. 423, cl. (b)—Power of Appellate Court to order a retrial.*] A conviction and sentence under s. 211 of the Penal Code by a Magistrate having jurisdiction to try the case was on appeal, set aside, and a new trial, under the same section, was directed by the Sessions Judge. It was contended that the power to order a new trial under s.

Retrial (*contd.*)—

423, cl. (*b*), of the Criminal Procedure Code, could only be exercised when the conviction and sentence was set aside for want of jurisdiction in the trying Magistrate. *Held* that there is nothing in s. 423, cl. (*b*), of the Code to limit the power of an Appellate Court to order a retrial. *Queen-Empress* v. *Maula Buksh* (I. L. R., 15 All. 205) and *Queen-Empress* v *Jabanulla* (I. L. R., 23 Cal. 975) followed. *Queen-Empress* v *Sukka* (I. L. R., 8 All. 14) disapproved of. —SATISH CHANDRA DAS BOSE *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 172.

2. RE-TRIAL—*Criminal Procedure Code, s. 403—Charge of an offence under s. 414 of the Penal Code — Previous conviction under s. 411 in respect of other property stolen at the same time and from the same person.*] *Held* that where a person had been convicted under s. 411 of the Penal Code in respect of certain property stolen on a particular occasion from a particular person, he could not subsequently be tried for an offence under s. 414 of the Code in respect of other property stolen on the same occasion from the same person. *Queen-Empress* v. *Makhan* (I. L. R., 15 All. 317), referred to.—EMPEROR *v.* MIAN JAN, I. L. R., 28 All. 313.

3. RE-TRIAL—*Criminal Procedure Code, ss. 235, 403—Penal Code, ss. 365, 452—Abduction.*] The accused trespassed into the house of the paramour of a widow, beat the latter and his brothers and carried off the widow. They were tried and convicted under s. 452 of the Penal Code. *Held* that s. 403 of the Criminal Procedure Code, does not debar the subsequent trial of the accused under s. 365 of the Penal Code for carrying off the widow.—BALDEO PERSHAD *v.* KING-EMPEROR, 3 A. L. J. 2.

4. RE-TRIAL—*Sessions Judge, Jurisdiction of—Power of Sessions Judge on revision—Conviction of offence without charge—Order of Appellate Court for re-trial—Criminal Procedure Code* (*Act V. of 1898*), *ss. 232 to 423.*] Where an accused was charged under s. 471 of the Penal Code of dishonestly using as genuine a false document, and the Magistrate convicted him under s. 500 of that Code of defamation, of which offence there was no charge framed against him. *Held* that the Sessions Judge, if he thought a new trial necessary, should have proceeded under s. 232 of the Criminal Procedure Code, under which an Appellate Court is competent to direct a retrial and not, as he did, under s. 423. *Quære*—Whether an Appellate Court has under s. 428 of the Code general power to order a new trial. — GOBINDA PERSHAD PANDEY *v.* GARTH, I. L. R., 28 Cal. 63.

Retrial (*contd.*)—

5. RE-TRIAL—*Criminal Procedure Code, (Act V. of 1898), ss. 284, 285, 537—Trial with aid of assessors—Trial with the aid of one assessor only—Legality of such trial—Assessors.*] In a case triable by a Court of Session with the aid of assessors one of the assessors being ill, the trial commenced and ended with only one assessor. *Held* that there was no legal trial, that the proceedings must be set aside and a new trial directed. S. 537 of the Criminal Procedure Code (Act V. of 1898) had no application to such a case, as the Court was not properly constituted. — KING-EMPEROR *v.* JAYRAM, I. L. R., 25 Bom. 694.

Review—

1. REVIEW—*Powers of review of High Court in Criminal cases—Finality of order of High Court—Order not sealed—Criminal Procedure Code, ss. 107 and 110—Security for keeping the peace—Security for good behaviour.*] An application from jail —worded as an appeal—against an order passed under ss. 110 and 118 of the Code of Criminal Procedure was summarily rejected by means of the following order :— "No appeal lies in this case, and no sufficient ground appears for interference in revision. The application is dismissed." This order was signed by the Judge who passed it, but was not sealed with the seal of the Court. *Held* that the Judge who had passed the order quoted above was not under the circumstances precluded from entertaining an application for revision presented by Counsel in relation to the same matter. *Queen-Empress* v. *Lalit Tiwari*, I. L. R., 21 All. 177, followed. *Held* also that where it appears from the evidence that there is an apprehension of any one using violence towards a particular person or particular persons he ought to be bound over to keep the peace as provided by s. 107, and not be proceeded against under s. 110 of the Code of Criminal Procedure.—EMPEROR *v.* KALLU, I. L. R., 27 All. 92.

2. REVIEW—*Criminal Cases—Power of a Division Bench of the High Court to review its judgment discharging a Rule before signature—Discharge of the accused in a part-heard case for absence of remaining witnesses without consideration of the evidence already on the record—Criminal Procedure Code* (*Act V. of 1898*), *ss. 253 369—Practice.*] It is competent to a Division Bench of the High Court, which has erroneously discharged a Rule on a point of law and a misapprehension of the facts in connection therewith, to review its judgment before it has been signed. *In the Matter of the petition of Gibbons*, I. L. R., 14 Cal. 42; *Queen-Empress* v. *Lalit Tiwari*,

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I. L. R., 21 All. 177, referred to. *Queen-Empress* v. *Fox*, I. L. R., 10 Bom. 176, dissented from. Where a Magistrate, after some of the prosecution witnesses had been heard by another Bench of Magistrates, discharged the accused because the other witnesses were not present, the High Court set aside the order of discharge and directed him to dispose of the case after argument with reference to the evidence already on the record.—AMODINI DASEE *v.* DARSAN GHOSE, I. L. R., 38 Cal. 828.

3. REVIEW — *Criminal Procedure Code (Act V. of 1898), s. 195—Application for sanction to prosecute — Dismissal of the application for default — Appellate Court cannot grant sanction on appeal—Dismissal of application for default not permissible—Review of order not permissible under the Code.*] An application was made by the Public Prosecutor of Belgaum to the Subordinate Judge of Gokak for sanction to prosecute one G for offences committed in his Court. The Public Prosecutor failed to appear in the Court on the day and at the hour fixed for the hearing of the application. The Subordinate Judge dismissed the application as for default. On an application being made to review this order, the Subordinate Judge declined to do so. On appeal, however, the District Judge granted the sanction under s. 195 of the Criminal Procedure Code (Act V. of 1898). *Held*, that the Subordinate Judge had no power to review his order because the Criminal Procedure Code contained no provision giving jurisdiction to a Court to review orders passed under it.—IN RE GOPAL SIDDESHWAR, I. L. R., 32 Bom. 203.

Revision—

1. REVISION — *Practice — Procedure — Sanction to prosecute—Stay of Criminal proceedings pending disposal of civil suit—High Court—Criminal Procedure Code (Act V. of 1898), ss. 439, 195, 476*] The High Court is competent, in the exercise of its revisional power under s. 439 of the Criminal Procedure Code (Act V. of 1898), to interfere with an order made by a subordinate Court under s. 476 of the Criminal Procedure Code (Act V. of 1898) directing the prosecution of any person for the offences referred to in that section. The High Court in this case refused to stay Criminal Proceedings directed by a subordinate Court under s. 476 of the Criminal Procedure Code (Act V. of 1898) until an appeal in the civil suit in connection with which the criminal charges were made had been decided.—IN RE BAL GANGADHAR TILAK, I. L. R., 26 Bom. 785.

2. REVISION—*Criminal Procedure Code, ss. 476, 435, 439—Madras (Act III. of 1869),*

Revision (*contd.*)—

Judicial Proceedings—Pleader, propriety of imputations made by.] The High Court has power to revise proceedings under s. 476 of the Code of Criminal Procedure when such proceedings are null and void for want of jurisdiction. *Aranholi Athan* v. *King-Emperor* (I. L. R., 26 Mad. 98), referred to and distinguished. Madras (Act III. of 1869) does not authorize the issuing of summons in a departmental inquiry for bribery. The pendency of an appeal by the accused, who had paid the fine imposed on him, would not give any Court authority or power to arrest him or to take recognisances from him for appearing at any further enquiry. The presenting of a petition imputing improper motives to a Magistrate who is illegally detaining a person to take recognisances from him to enforce his attendance for the foregoing purpose will not justify any action by such Magistrate under s. 476 of the Code of Criminal Procedure as the offence is not committed in the course of a *judicial proceeding*, nor is it brought to his notice in the course of such proceeding.—SURYANARAYANA ROW *v.* EMPEROR, I. L. R. 29 Mad. 100.

3. REVISION—*Criminal Procedure Code, ss. 195, 439—Civil Procedure Code, s. 622—Sanction to prosecute — Jurisdiction.*] Where sanction to prosecute is granted under the provisions of s. 195 of the Code of Criminal Procedure by a Civil Court, the High Court has no jurisdiction in the exercise of its revisional powers on the Criminal side to interfere with such an order. *Nazir Hasan* v. *Dost Muhammad* (I. L. R., 26 All. 1) overruled. *In the Matter of the petition of Bhup Kunwar*, (I. L. R., 26 All. 249); *In re Chennana Goud*, (I. L. R., 26 Mad. 139); referred to.—SALIG RAM *v.* RAMJI LAL, I. L. R., 28 All. 554; 3 A. L. J. 394.

4. REVISION—*Indian Penal Code (Act XLV. of 1860), s. 193—Criminal Procedure Code (Act V. of 1898), ss. 435, 439—Perjury — Contradictory statements.*] The controlling power of the High Court "is a discretionary power, and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances which vary greatly. This discretion ought not to be crystallized, as it would become in course of time, by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion which the Legislature has committed to them. This discretion, like all other judicial discretions, ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according

Revision (*contd.*)—

to the exigencies of each case."—EMPEROR *v.* BANKATRAM LACHIRAM, 28 Bom. 533.

5. REVISION — *High Court, revisional jurisdiction over immoveable property—Power to interfere with orders directing restoration of possession of immoveable property—Duty of Magistrate to pass orders under ss. 517 and 522 in favour of a party forcibly dispossessed—Criminal Procedure Code (Act V. of 1898), ss. 423 (1) (d), 439, 517, and 522.*] Under s. 423 (1) (*d*) of the Criminal Procedure Code the High Court has power, as a Court of Revision, to interfere with an order passed by a Magistrate under s. 522 of the Code. *Manki* v. *Bhagwanti*, I. L. R., 27 All. 415, followed. *Ram Chandra Mistry* v. *Nobin Mirdha*, I. L. R., 25 Cal. 630, referred to. Where a party was found to have been assaulted and dispossessed of a bungalow and its contents by the opposite party, who was, in consequence, convicted under s. 323 of the Penal Code. *Held*, that it was the duty of the Magistrate to have passed orders under ss. 522 and 517 directing restoration of the bungalow and its contents to the party thus forcibly dispossessed. — AHMED ALI *v.* KEENOO KHAN, I. L. R., 36 Cal. 44.

6. REVISION—*Statutes—24 and 25 Vict., c. 104, s. 15—Criminal Procedure Code (Act V. of 1898), ss. 145, 435, 439—Order of Magistrate in case of a dispute relating to immoveable property — High Court's powers of revision.*] *Held*, that the High Court cannot exercise revisional powers in respect of proceedings under Chapter XII. of the Code of Criminal Procedure unless in a case where the Magistrate has acted without jurisdiction. *Doulat Koer* v. *Rameswari Koeri*, (I. L. R., 26 Cal. 625) followed.—IN THE MATTER OF THE PETITION OF NATHU MAL, I. L. R., 24 All. 315.

7. REVISION—*Criminal Procedure Code—(Act V. of 1898), ss. 435, 437—Petition by complainant for retrial of accused after discharge—No notice to accused—Order by Sessions Judge directing further enquiry—Revision petition to High Court—Jurisdiction—Necessity for notice before order passed to prejudice of accused.*] A person charged with having committed criminal breach of trust was discharged, whereupon the complainant petitioned the Sessions Judge, under s. 435 of the Code of Criminal Procedure, to direct a retrial of the case. Notice of the application was not given to the accused. The Sessions Judge, acting under s. 437, ordered a further enquiry to be made. On a criminal revision petition being preferred by the accused in the High Court against that order :—*Held*, that it was competent to the High Court

Revision (*contd.*)—

to revise the order; and that, without laying down a general rule that the omission to give notice of such an application renders an order under the section bad, the order must be set aside as it had not been shown that in this case there was any difficulty in giving notice, or that there was any reason why the general rule should not be followed that an order should not be made to a man's prejudice without giving him an opportunity for being heard. — ALAGIRISAMY NAIDU *v.* BALAKRISHNASAMI MUDALIAR, I. L. R., 26 Mad. 41.

8. REVISION—*Criminal Procedure Code (Act V. of 1898), s. 145—No decision come to by Magistrate as to party in Possession—Application for revision at instance of party who could not in his own right be entitled to immediate possession—Practice.*] *Held*, that where a Magistrate, after entertaining proceedings under s. 145 of the Code of Criminal Procedure, had declined to make any order declaring one or other of the contending parties in possession, the High Court would not interfere in revision at the instance of a person who, though apparently the next reversioner to the estate, could for the time being have no possible right on his own behalf to present possession. *Laldhari Singh* v. *Sukdeo Narain Singh* (I L. R., 27 Cal. 892) and *Anesh Mollah* v. *Ejaharuddi Mollah* (I. L. R., 28 Cal. 446) distinguished.—IN THE MATTER OF THE PETITION OF BEHARI LAL, I. L. R., 24 All. 443.

9. REVISION—*High Court's power of revision—Presidency Magistrate, Proceedings of—Order for further inquiry—Criminal Procedure Code (Act V. of 1898), ss. 423, 435, 439—Charter Act (24 and 25 Vict., c. 104, s. 15—Letters Patent, High Court, 1865, cl. 28.*] The High Court has powers of revision in respect of an order of discharge passed by a Presidency Magistrate by reason, not of s. 28 of the Letters Patent, 1865, but of s. 15 of the Charter Act (24 and 25 Vict., c. 104). That section has always been interpreted in a very extended meaning so as to give ample powers of superintendence, that is to say, powers of revision over proceedings of subordinate Courts. But the High Court has no power under the Criminal Procedure Code to interfere in revision with an order of dismissal or discharge passed by a Presidency Magistrate. *Colville* v. *Kristo Kishore Bose* (I. L. R., 26 Cal. 746) dissented from. *Opporba Kumar Sett* v. *Probod Kumary Dassi* (1. C. W. N. 49) referred to. A Presidency Magistrate, acting under s. 203 of the Criminal Procedure Code, dismissed a complaint on the report of the

Revision (*contd.*)—

police without examining the complainant, and without finding on such examination that there was no sufficient ground for proceeding. The High Court, acting under s. 15 of the Charter Act, ordered a further inquiry to be made into the matter of the complaint.—CHAROOBALA DABEE *v.* BARENDRA NATH MOZUMDAR, I. L. R., 27 Cal. 126.

10. REVISION—*Criminal Procedure Code (Act V. of 1898), ss. 439, 476—Power of High Court to revise an order under s. 476—Circumstances under which such power should or should not be exercised.*] The High Court has power in revision to set aside an order passed by a Civil, Criminal, or Revenue Court under s. 476 of the Code of Criminal Procedure, but such power should not be exercised where the Court below has arrived at a judicial opinion on evidence that there is ground for inquiring into an offence referred to in s 195, merely because the High Court disagrees with that opinion.—IN THE MATTER OF THE PETITION OF ALAMDAR HUSAIN, I. L. R., 23 All. 249.

Right of Private Defence—

1. RIGHT OF PRIVATE DEFENCE—*Defence—Public servant—Unlawful assembly—Public servant acting in good faith under color of his Office—Institution of proceedings—Criminal Procedure Code (Act V. of 1898), ss. 87, 88, and 190—Penal Code (Act XLV. of 1860), ss. 99, 143, and 183.*] A Magistrate issued a proclamation under s 87 of the Criminal Procedure Code, and an order of attachment under s. 88 of the property of certain absconding accused persons. During the attachment an objection was raised that the property being attached did not belong to the absconders. Tne police-officer, on being informed by the patwari that it was their property, continued the attachment. A mob, among whom were the accused, assembled, and by assuming a threatening attitude prevented the police-officer from further attaching the property. *Held*, the conviction of accused under ss. 143, 183, of the Penal Code was right. *Held*, further, that even supposing the property attached was not the property of the absconders, the rightful owner had no right of private defence of his property, in as much as the evidence showed that the police officer was acting in good faith under color of his office; and even supposing the order of attachment might not have been properly made, that would in itself be no sufficient ground for such a defence. *Held*, also, that where the attaching police-officer sent a person to inform the Magistrate of what had

Right of Private Defence (*contd.*)—

taken place, and the Magistrate thereupon sent the Senior Inspector to the spot to take up the case, instructing him to take the statement of the attaching police officer as the first information of the occurrence and to send it in to him (the Magistrate), so that proceedings mignt be taken, it could not be said that the proceedings in the case had not been properly instituted.—BHAI LAL CHOWDHRY *v.* EMPEROR, I. L. R., 29 Cal. 417.

2. RIGHT OF PRIVATE DEFENCE—*Penal Code (Act XLV. of 1860), ss. 96, &c., 147—Riot—Private defence of property—Deliberate aggression by party entitled to possession.*] Party A sowed a crop in a field to the possession of which apparently they were entitled. Party B claiming the field and the crop as theirs, entered upon the land and began to cut the crop. Party A, having watched party B enter upon the land took counsel together and then proceeded to attack party B, and a fight ensued in which grievous hurt was caused. *Held*, that it was not open to party A to plead that they were acting in the exercise of their right of private defence of property. *Queen-Empress* v. *Prag Dat* (I. L. R., 20 All. 459) followed. *Queen-Empress* v. *Narsing Pathabhai* (I. L. R., 14 Bom. 441) distinguished. *Pachkauri* v. *Queen-Empress* (I. L. R., 24 Cal. 686) not followed.—KING-EMPEROR *v.* KALIJI *alias* KALI SINGH, I. L. R., 24 All. 143.

3. RIGHT OF PRIVATE DEFENCE—*Penal Code (Act XLV. of 1860), ss. 96, &c., 147—Riot.*] Of two parties, each of which claimed title to certain trees, one party went to cut down the trees, and went armed with *lathis*, apparently with the intention of resisting anticipated opposition on the part of the other claimants. The other party attempted to stop the cutting down of the trees, and a fight ensued, in the course of which several people were injured. *Held*, that the first party were guilty of rioting, and, whatever their title to the trees was, could not claim that they had acted in the exercise of the right of private defence.—EMPEROR *v.* KADHU SINGH, I. L. R., 24 All. 298.

Right of Reply—

RIGHT OF REPLY—*Criminal Procedure Code (Act V. of 1898), s. 292—Act X. of 1882, ss. 289, 292—Adducing evidence—Documents put in during cross-examination by the accused of witnesses for the Crown.*] During the cross-examination

Right of Reply (*contd.*)—

of a witness for the Crown, certain documents were put in evidence by Counsel for the accused which were not part of the record sent up to the Court by the Committing Magistrate. No witnesses were called for the defence. The Crown claimed the right of reply. *Held* that as the documents put in during the cross-examination of a witness for the Crown were tendered and relied upon by the defence as distinct from the evidence actually tendered by the prosecution and submitted for cross-examination, they must be regarded as evidence adduced by the accused, and that therefore the Crown had the right of reply.—EMPRROR *v.* BHASKAR, I. L R., 30 Bom. 421.

Riot—

1. RIOT—*Special Constables—Refusal by persons appointed to accompany police-officer to obtain authority of appointment and arms, whether refusal to serve as such—Arrest—Arrest on refusal, legality of—Public servant—Obstructing him from discharge of his duty—Rioting—Police Act (V. 1861), ss. 17, 19—Penal Code (Act XLV. of 1860), ss. 147, 149, 353.*] N, S and G were appointed special constables under s. 17 of the Police Act. A Police Inspector accompanied by some police went to their village, and informed them that they had been so appointed, and requested them to accompany him to the police station of **B**, which they declined to do. The Inspector then had N arrested, whereupon N shook himself free, and N, S and G with other persons, who had assembled, abused and threatened the police, and compelled them to withdraw from the village. N, S and G were convicted under s. 19 of the Police Act, and they were also convicted with other persons under s. 353 read with s. 149 of the Penal Code. *Held* that the refusal of N, S and G to accompany the Inspector constituted no offence under s. 19 of the Police Act, as the order was intended not for any purpose of police duty, but simply that they might obtain the authority of their appointment and the necessary arms. *Held*, further, that the refusal of N to accompany the Inspector was not an offence for which N could be arrested, and as the police, when obstructed, were not acting in lawful discharge of their duty, none of the persons concerned could be convicted of an offence under s. 353 of the Penal Code, but that they were guilty of rioting under s. 147 of that Code. *Empress* v. *Dalip* (I. L. R., 18 All. 246) approved of. *Chunder Coomer Sen* v. *Queen-Empress* (3 C. W. N. 605) distinguished.—RAMAN

Rfot (*contd.*)—

SINGH *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 411.

2. RIOT—*Owner or occupier of land on which riot takes place, liability of—Agent—Manager—Act of commission as well as omission — Knowledge — Penal Code (Act XLV. of 1860), s. 154.*] The accused was the sole proprietor of village *A*. A serious riot involving loss of life took place at village *A*, and the accused's naib instead of doing anything to prevent or suppress the riot accompanied the rioters and stood close by, while the riot was going on, after which he absconded. The accused, who had no knowledge that a riot was likely to be committed was convicted under s. 154 of the Penal Code and fined. *Held* (RAMPINI and PRATT, JJ.) a landlord is liable under s. 154 of the Penal Code for the acts of commission as well as ommision not only of himself, but of his agent or manager. Knowledge on the part of the owner or occupier of the land, of the acts or intentions of the agent is not an essential element of an offence, under s. 154 of the Penal Code, and he may be convicted under that section though he may be in entire ignorance of the acts of his agent or manager. RAMPINI, J.—There seems to be no ground for holding that s. 154 is intended in order to punish the landlord, where his agent has not rendered himself liable to the criminal law, and that when the agent has done so, then his liability is at an end. On the contrary the provisions of the section impose on non-resident landholders and their agents, the duty of maintaining the public peace and preventing unlawful assembly and riots on their estates and render the former liable for any dereliction in the discharge of this duty. *Queen-Empress* v. *Payag Singh* (I. L. R., 12 All. 550) followed. *The Queen* v. *Surroop Chunder Paul* (12 W. R. 75), *Tarakant Dass* v. *Empress* (4 C. W. N. 691), *Queen-Empress* v. *Hurranath Roy* (3 W. R. 54), *In the Matter of Radha Nath Chowdhry* (7 C. L. R. 289), referred to. AMEER ALI, J.—Owners of property are made responsible by law for the negligence of their agents or managers, but not for their criminal acts. A charge of neglect assumes that the agent is not directly concerned in the commission of the offence. It he is so concerned it ceases to be neglect, it is a crime. It would be straining the law to make the absent owner, who has himself no knowledge of the occurrence, liable for not giving information of a riot that has taken place, if his agent takes part in it, and, as a rioter actually taking part in it, does not, as a matter of course, give notice of it.—KAZI ZIAMUDDIN AHMED v. QUEEN-EMPRESS, I. L. R., 28 Cal. 504.

Rioting—

RIOTING — *Common object, omission to find—Failure of the common object charged —Appellate Court—Defective charge—Prejudice—Criminal Procedure Code (Act V. of 1898), ss. 423, 537, cl. (a)—Private defence of property in possession of assailants — Penal Code (Act XLV. of 1860), ss. 97, 99, 147.*] *Held* by WOODROFFE and MOOKERJEE, *JJ.* (RAMPINI, *J. dissenting*) that, when the judgments of the Appellate Court and the Magistrate contain no finding as to what the common object of an unlawful assembly, if any, was, the conviction ought to be set aside. Where the common object stated in the charge against the petitioners was to take possession of some property by criminal force, or to enforce a right or supposed right on it, and the Appellate Court found that the opposite party had been trying to encroach upon the land decreed to the petitioners and that the occurrence was the result of the complication, which the opposite party was trying to introduce by stealthy, wrongful acts: *Held* by the majority of the Court that the common object alleged in the charge had not been made out, and that the accused were entitled to be acquitted. *Rahimuddi Asgar Ali* (I. L. R., 27 Cal. 990) followed. Where the charge did not specify the property, the taking possession of which was stated to be the common object of the unlawful assembly, and its specification would have altered the whole complexion of the case: *Held* by the majority of the Court that the omission had prejudicedthe accused and was not cured by s. 537, cl. (*a*). *Behari Mathon* v. *Queen-Empress* (I. L. R., 11 Cal. 106), *Sabir* v. *Queen-Empress* (I. L. R., 22 Cal. 276) and *Chunder Coomar Sen* v. *Queen-Empress* (3 C. W. N. 605) followed. Where the petitioners were maintained in possession of certain lands, under s. 145 of the Criminal Procedure Code, including the homestead of *A*, and the opposite party unlawfully attempted to take possession of some huts standing thereon, whereupon the petitioners came with an armed body and demolished the huts, and on being resisted by the opposite party wounded some of them: *Held* by the majority of the Court that they were justified in taking precautions and using such force as was necessary to prevent aggression by the opposite party. *Pachkouri* v. *Queen-Empress* (I. L. R., 24 Cal. 686) followed. *Ganouri Lal Das* v. *Queen-Empress* (I. L. R., 16 Cal. 206) distinguished.—PORESH NATH SIRKAR *v.* EMPEROR, I. L. R., 33 Cal. 295.)

2. RIOTING—*Several alternative common objects charged—Judgment of Appellate Court—Omission to find whether the charge was sustainable and which common object has been proved.*] Where a charge, as drawn up by the Magistrate, alleges several alternative common objects of the unlawful assembly, it is incumbent on the Appellate Court to determine, whether it is sustainable, and if so, which of the common objects stated has been made out.—MANARUDDI *v.* EMPEROR, I. L. R., 35 Cal. 718.

Rioting (*contd.*)—

3. RIOTING—*Common object established different from that laid in the charge—Common object not to enforce, but to maintain the actual enjoyment of a right—Right of private defence—Excess of that right—Penal Code (Act XLV. of 1860) ss. 103 (4), 141 (4), 147, 323 and 324.*] It is not a general proposition of law that a conviction under s. 147 of the Penal Code cannot be supported whenever the common object, as stated in the charge, is not precisely made out. The question in each case is whether the common object established agrees in essential particulars with that laid in the charge. Where the common object set out in the charge was to assault the complainant and his party, who were cutting the paddy of their land, and thereby to forcibly oust them, but the common object established by the facts found by the Sessions Judge was to maintain possession of the land by the accused:—*Held*, that the common object in the charge had not been substantially made out, and that the conviction under s. 147 of the Penal Code was, therefore, bad. Where the accused, who were found to be in possession of the disputed land, went upon it in a large body armed with *lathis*, prepared in anticipation of a fight, and where reaping the paddy grown by them, when the complainant's party came up and attempted to cut the same, whereupon a fight ensued and one man was seriously wounded and died subsequently:—*Held*, that on the facts established, the common object was not to enforce a right or supposed right but to maintain undisturbed the actual enjoyment of a right, and that the assembly was not, therefore, unlawful under s. 141 (4). Where one accused, under the circumstances, caused simple hurt, and another, a fracture of the skull which ended fatally:—*Held*, that the former was within his right of private defence, but that the latter had not proved facts bringing the case under s. 103 (4).—SILAJIT MAHTO *v.* EMPEROR, I. L. R., 36 Cal. 865.

4. RIOTING—*Right of private defence—Use of excessive violence by some members of the assembly — Responsibility of other members continuing in it, and aiding and abetting—Indian Penal Code (Act XLV. of 1860), ss. 99, 147, 148 and 326.*] If the accused are justified in resisting the theft

Rioting (*contd.*)—

of their crops, they cannot be considered as members of an unlawful assembly, with the common object to assert a right to the disputed land and crops, because some members thereof may have exceeded the right of private defence; but if some of the members continue in it, after the others have exceeded the right by the infliction of unnecessary violence, and aid and abet the latter, they also must be considered as having exceeded the right. *In the Matter of Kalee Mundle*, 10 C. L. R. 278, referred to. Where the accused three of whom were armed with a sword, a *garasa* (scythe) and a *lobanda* (iron-shod stick) respectively, and the rest with *lathis*, went in a large body to a certain disputed land, where the labourers of the opposite party were reaping some *musouri* crop, and attacked them, fatally wounding one and severely injuring another, it was *held* that the accused who ordered the attack, and those who used the sword, *garasa* and *lobanda* had exceeded the rght of private defence, and so also the others, who continued in the unlawful assembly thereafter and aided and abetted the former.—BAIJNATH DHANUK *v.* EMPEROR, I. L. R., 36 Cal. 296.

5. RIOTING—*Common object of unlawful assembly—Necessity of express finding on the point by the Lower Courts in their judgments—Criminal Procedure Code (Act V. of 1898), ss. 367 and 424—Indian Penal Code (Act XLV. of 1860), ss. 141 and 147.*] Where the common object of an unlawful assembly was stated in the charge to be to enforce a right or supposed right, and there was no dispute as to the common object in the lower Courts, which did not, therefore, discuss the question or come to any express finding in so many words on the point, it was *held* that they had impliedly found the common object of the assembly to be the same as stated in the charge, and that the accused had been in no way prejudiced. *Sabir* v. *Queen Empress*, I. L R., 22 Cal. 276, *Poresh Nath Sircar* v. *Emperor*, I. L. R., 33 Cal. 295 distinguished.—DASARATHI MAHAPATRA *v.* RAGHU SAHU, I. L. R., 36 Cal. 158.

6. RIOTING—*Right of Private Defence—Protection of Zemindar's right to Property—Excessive hurt by one member of an unlawful assembly—Criminal liability of the other members thereof—Penal Code (Act XLV. of 1860) ss. 147, $\frac{326}{149}$*] Where the tenants were found to have held their lands on the *batai* system, under which harvested crops should be taken to the village *khalihan*, but it appeared that they went in a large body armed with *lathis* with the avowed intention of removing them to their own houses, and were making up the

Rioting (*contd.*)—

crops already cut into bundles, whereupon the zemindars' watchmen remonstrated and a number of their *amlas* went to the spot armed with *lathis* and swords and a fight took place, owing to the interference of the leader of the tenants, in the course of which some of the tenants received slight incised wounds and one of them a severe one inflicted by one of the accused and where it further appeared that the zemindars' people had, four days before the date of the occurrence, sent an urgent appeal to the police for protection against a serious breach of the peace which seemed imminent:—*Held*, that, inasmuch as the common object of the accused was to protect the zemindars' rights over the crops, and there was no specific finding by the Sessions Judge that their intention was to use more force than was necessary or that they had in fact used excessive force, they acted in the exercise of the right of private defence and were not guilty of rioting. *Held*, also, that, as there was nothing to show that the grievous hurt caused by one of the accused was not his own individual act., the others were not guilty under ss. $\frac{326}{149}$ of the Penal Code. Each case of this kind must be decided on its own particular facts. *Baijnath Dhanuk* v. *Emperor*, I. L. 36 Cal. 296, distinguished.—RAM KHELAWN SINGH *v.* EMPEROR, I. L. R, 36 Cal. 827.

7. RIOTING—*Entry on land in possession of another—Temporary occupation—Unlawful assembly—Private defence, right of—Penal Code (Act XLV. of 1860) ss 99, 101, 104, 147.*] The petitioners went with three ploughs on land to which the complainant had the right of possession, and of which he was in possession till such entry, and began to plough up the land, to uproot some castor plants and throw them away. While they were thus in actual but temporary occupation, the complainant and his party went on the land and tried to unyoke the cattle, whereupon a riot took place:—*Held*, that the petitioners were not justified in entering on the land, in ploughing it, uprooting the plants and throwing them away, that they were members of an unlawful assembly the common object of which was to enforce a right or supposed right for the exercise of which they were prepared to use force and that their action in beating the complainant's party was not justified by the fact of their having obtained temporary occupation. The right of private defence of property is a restricted one. *Ganouri Lal Das* v. *Queen-Empress*, I. L. R., 16 Cal. 206, *Pachkauri* v. *Queen-Empress*, I. L. R., 24 Cal. 686, *Poresh Nath Sircar* v. *Emperor*, I L. R., 33 Cal. 295 and *Queen-Empress* v. *Tirakadu*, I. L. R., 14 Mad. 126, referred

Rioting (*contd.*)—

to.—The observations of HOLLOWAY *J.* in 7 Mad. H C. Proceedings, 7 Mad H. C. Ap. XXXV. cited and approved.—JAIRAM MAHTON *v.* EMPEROR, I. L. R., 35 Cal. 103.

8. RIOTING—*Acquittal of—Conviction of grievous hurt—Constructive guilt -Abetment—Penal Code (Act XLV. of 1860), ss. 114, 525, with 149.*] Where the accused persons have been acquitted of rioting, they cannot be properly convicted of grievous hurt under s. 325 by the application of s. 149 of the Penal Code, where it has not been found that these persons or any of them were members of an unlawful assembly, in prosecution of the common object of which grievous hurt was caused by any other member of the same assembly, or that the offence was such as each member of the assembly knew to be likely to be committed in prosecution of that object. The mere presence as an abettor of any person would not, under the terms of s. 144 of the Penal Code, render him liable for the offence committed. *Empress* v. *Chatradhari Goala* (2 C. W. N. 49) explained. In order to bring a person within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, if absent he would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. *Queen* v. *Mussamut Niruni* (7 W. R. Cr. 49) relied on.—ABHI MISSER *v.* LACHMI NARAIN, I. L. R., 27 Cal. 566.

9. RIOTING—*Common object not unlawful—Entering upon land held jointly by the judgment-debtors to take symbolical possession thereof—Right of private defence—Liability of a person for individual acts done in excess of such right—Power of Appellate Court to alter a finding of acquittal under ss. $\frac{325}{324}$ of the Penal Code into one of conviction under s. 323—Penal Code (Act XLV. of 1860), ss. 99, 147 and 323—Criminal Procedure Code (Act V. of 1898), s. 423.*] Where a body of about 10 men, belonging to the decree-holder's party, went with the Civil Court officers upon a plot of land in the joint possession of the judgment-debtors to take symbolical possession thereof, and the drummer was assaulted by one of the latter, whereupon the appellants and their party replied by an attack on their opponents, during the course of which one of the appellants' party, not before the Court, fractured the skull of the drummer's assailant by an isolated act, but the appellants continued to beat him after he had fallen helpless on the ground: *Held*, that the appellants had a right of private defence under the circumstances, that their common object was, therefore, not unlawful and that the conviction under s. 147 of the Penal Code was bad, but that, having exceeded such right by beating the wounded man after he had fallen, they were guilty under s 323. When an attack is made on persons acting in the lawful exercise of their right over property, they are entitled to the right of private defence, and the only question that arises thereafter is whether any member of the party individually exceeded the right. Persons exercising their lawful rights are not members of an unlawful assembly, nor can the assembly become unlawful by their repelling an attack made on them by persons who had no right to obstruct them, nor by exceeding the lawful use of their right of private defence. In such a case each is liable only for his individual acts done in excess of such right. When an accused charged under ss. 147 and $\frac{325}{324}$ of the Penal Code is convicted of the former and acquitted of the latter offence, the Appellate Court has power to acquit him of rioting, and convict him of hurt under s. 323.—KUNJA BHUIYA *v.* EMPEROR, I. L. R., 39 Cal. 896.

10. RIOTING — *Charge — Offence—Common object—Necessity of stating the common object in the charge under ss. 143, 147 and 149 of the Penal Code—Effect of omission to state the common object—"Succeeded by another Magistrate," meaning of—Criminal Procedure Code (Act V. of 1898), ss. 221, 223, 350.*] An offence can be legally described by its specific name in the charge, and the question whether any further particulars are necessary under s. 223 of the Criminal Procedure Code is a question of discretion according to the circumstances of each case. In cases of rioting the common object should be stated in the charge, but omission to state it, under ss. 143 and 147 of the Indian Penal Code, does not vitiate a conviction if there is evidence on the record to show it. It is otherwise with a charge under s 149, Indian Penal Code, for, then, there is no specific name for the offence, and the fact that any offence is committed in prosecution of the common object is of the essence of the case, and there could be no conviction for any offence committed with a different object. It is obligatory to set out the common object in a charge under s. 149, unless it has already been specified in the main charge under s. 147. *Basiruddi* v. *Queen-Empress*, I. L. R., 21 Cal. 827, referred to. The words "succeeded by another Magistrate" in s. 350 of the Criminal Precedure Code should not be construed in a narrow sense, but should be interpreted to mean—ceases

Rioting (*contd.*)—

to exercise jurisdiction in the particular inquiry or trial, and not in the particular post. *Thakur Das Manjhi* v. *Namdar Mundul*, 24 W. R. Cr. 12, *Emperor* v. *Purshottam Kara*, I. L. R. 26 Bom. 418, referred to. *Mohesh Chandra Saha* v. *Emperor*, 12 C. W. N. 416, and *Ali Mahomed Khan* v. *Tarak Chandra Banerji*, 13 C. W. N. 420, followed. *Queen-Empress* v. *Radhe*, I. L. R., 12 All. 66, *Deputy Legal Remembrancer* v. *Upendra Kumar Ghose*, 12 C. W. N. 140, not followed.—KUDRUTULLA *v.* EMPEROR, I. L. R., 39 Cal. 781.

11. RIOTING—*Test of liability of owner, or person having or claiming an interest in land, for the acts and omissions of an agent or manager—Appointment of latter by the mother, and not by the the adopted son—Legality of the conviction of the son—Penal Code (Act XLV. of 1860, s. 154.*] The criminal liability of a person specified in s. 154 of the Penal Code for the acts or omissions of an agent or manager depends upon the question by whom the latter was appointed Where, therefore, it was shown that three Hindu *pardanashin* ladies had the management of the estate and were responsible for the appointment of the naib who had fomented the riot, and that their adopted sons had nothing to do with such appointment, though they took some share in the active management of the estate: *Held*, that the ladies were alone liable under s. 154. It is impossible to punish in every case every person who has any interest in the land The responsibility depends on the fact of the person who caused the riot being himself the person who has an interest in the land, or an agent or a manager of such person, and one of the facts to be proved is, whose agent or manager the person fomenting the riot is. —SIVA SUNDARI CHOWDHRANI *v.* EMPEROR, I. L. R., 39 Cal. 834.

Robbery—

ROBBERY—*Penal Code, ss 392, 411—Criminal Procedure Code, s. 181—Jurisdiction—Robbery committed outside British India—Stolen property brought into British territory.*] Two persons, B, who was not a British subject, and R, who was, were committed to the Court of Session at Jhansi, it being alleged against them that they had committed a robbery in an adjoining Native State and had brought the stolen property into British territory. *Held* that though neither could be tried by the Sessions Judge of Jhansi for the robbery, B, because he was not a British subject, and R, because the certificate required by s 188 of the Code of Criminal Procedure was wanting, yet both might be tried for the offence of retaining

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stolen property under s. 411 of the Penal Code *King-Emperor* v. *Johri* (I. L. R., 23 All 266) distinguished. *Queen-Empress* v. *Abdul Latif* (I. L. R., 10 Bom 186), followed.—EMPEROR *v.* BALDEWA, I. L. R, 28 All. 372; 3 A. L. J. 146.

S.

Sale of Noxious Food—

1. SALE OF NOXIOUS FOOD.—Before a person can be convicted under s. 273 of the Indian Penal Code, it must be shown that the article which he has sold or exposed for sale was, to his knowledge or belief, noxious as food or drink.—EMPEROR *v.* SHEO LAL, I. L. R., 26 All. 387.

2. SALE OF NOXIOUS FOOD—*Penal Code, s. 273.*] Where as a matter of trade, the owner of a grain pit sold the contents of the pit before it was opened at a certain sum per maund whether the grain was good or bad, and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was *held* that the vendor could not be convicted under s. 273 of the Penal Code.—EMPEROR *v.* SALIG RAM, I. L. R., 28 All. 312.

Sale of Stolen Stamp—

SALE OF STOLEN STAMP—*Stamp Act (II. of 1899), s. 69—Court Fees Act (VII. of 1870) as amended by Act (XII. of 1891), s. 34—Sale by thief of stolen stamps—Offence*] A person who had been convicted of stealing two stamps was charged, under s. 69 of the Stamp Act, 1899, with having sold them, he not being a licensed vendor of stamps. *Held* that the words "sells or offers for sale," which occur in s. 69 of the Stamp Act and in s 34 of the Court Fees Act include the case of a thief who exchanges a stolen stamp for a sum of money, even though the thief cannot give a legal title by the transaction.—QUEEN-EMPRESS *v.* VIRASAMI, I, L. R., 24 MAD. 319.

Sanction—

1. SANCTION—*Criminal Procedure Code, s. 195—Application for sanction may be made by Government Pleader.*] There is nothing in law to prevent the Government Pleader, on instructions from the District Magistrate, applying for sanction to prosecute in respect of an offence alleged to have been committed in connection with a civil suit.—EMPEROR *v.* RAM ADHAR RAI, 28 A. W. N. 209=8 Cr. L. J. 157.

2. SANCTION—*Penal Code (Act XLV. of 1860), s. 206—Attachment of crops in execution of certificate under Public Demands Recovery Act—Want of sanction not occasioning failure of justice—Code*

Sanction (*contd.*)—

of Criminal Procedure (Act V. of 1898), ss. 195, 438, and 537—Public Demands Recovery Act (Ben. Act I. of 1895), ss. 7, 8, 19, 22.] The cutting and carrying off crops, which the accused knew to be under attachment in execution of a certificate under the Public Demands Recovery Act of 1895 is an offence under the latter part of s. 206 of the Penal Code. The amount due under the certificate cannot be regarded as a forfeiture or fine, but is money due under a decree, the certificate having the force and effect of a decree of a Civil Court. Where such an offence was taken cognizance of by a Magistrate without sanction for the prosecution being given, as should have been the case, but there was nothing in the proceeding to show that the want of such sanction had in fact occasioned a failure of justice. *Held* that the conviction was not bad only on that account.—SUNDER DASADH *v.* SITAL MAHTO, I. L. R., 28 Cal. 217.

3. SANCTION—*Criminal Procedure Code (Act V. of 1898), s. 195—Alleged forgery of documents submitted to Tahsildar holding enquiry as to transfer of names in Land Register—Revenue Court—Necessity for sanction to prosecute offender.*] A Tahsildar, when holding an enquiry as to whether a transfer of names in a Land Register should be made or not, is a Revenue Court; and before a party to any proceeding in such a Court can be prosecuted for an offence referred to in s. 195(*c*) of the Code of Criminal Procedure, sanction should be obtained.—QUEEN-EMPRESS *v.* MUNDA SHETTI, I. L. R., 24 Mad. 121.

4. SANCTION—*Criminal Procedure Code (Act V. of 1898), ss. 196 and 235—Sanction to prosecute—Joinder of charges—Trial for more than one offence—Offences falling under two definitions.*] The accused was committed for trial before a Sessions Court on a charge of abetment of dacoity under s. 116 of the Indian Penal Code (Act XLV. of 1860). In the course of the trial the Assistant Sessions Judge added an alternative charge under s. 511 of the Code and sentenced the accused under ss. 395, 116, and 511 of the Indian Penal Code (Act XLV. of 1860). In appeal the Sessions Judge held that the evidence disclosed the offence of an attempt to commit the offence of collecting arms, &c., with intention of waging war against the Queen, under s. 122, and as no charge under that section could be framed for want of the sanction of Government under s. 196 of the Criminal Procedure Code (Act V. of 1898), the accused could not be brought to trial at all. He, therefore, reversed the conviction and acquitted the accused. *Held* (reversing the order of acquittal) that the mere fact that no charge for the graver offence under s. 122 of the Indian Penal Code (Act XLV. of 1860) could be framed for want of Government sanction did not render the trial for the minor offence of attempting or abetting dacoity either irregular or illegal. *Per* FULTON, *J.*—According to the 2nd clause of s. 235 of the Criminal Procedure Code (Act V of 1898), if the accused abetted an offence under s. 122 of the Penal Code and by the same speech also attempted or abetted the offence of dacoity he could be tried for each of these offences; but as that section is controlled, as regards the offence against the State, by the provisions of s. 196 of the Criminal Procedure Code, its operation in this case is restricted to the minor offence for which the accused could legally be charged and tried. *Queen-Empress* v. *Karigowda* (I. L. R., 19 Bom. 51) and *In re Nagarji* (I. L. R., 19 Bom. 340) distinguished.—QUEEN-EMPRESS *v.* ANANT PURANIK, I. L. R., 25 Bom. 90.

5. SANCTION — *Complaint — Assault — Public servant, resistance to authority of —Criminal Procedure Code (Act V. of 1898), ss. 195, 476—Indian Penal Code (Act XLV. of 1860), ss 183, 352.*] A Munsiff of Pubna held an inquiry under s. 476 of the Criminal Procedure Code, and having come to the conclusion that the accused had committed various offences under the Penal Code in connection with certain execution proceedings in his Court sent the case for trial to the District Magistrate who in turn transferred the case to a Deputy Magistrate for disposal. The accused were tried under ss. 183 and 352 of the Penal Code. The Deputy Magistrate, without considering the case on its merits, acquitted the accused on the ground that there was no sanction as required by law for the prosecution of the accused. On appeal by the Local Government against the acquittal.—*Held* with regard to the charge under s. 183 of the Penal Code that, as the Munsiff had acted under s. 476 of the Criminal Procedure Code, it was incumbent on the Deputy Magistrate under cl. (2) of that section to proceed with the case according to law. *Held* also that the charge under s. 352 of the Penal Code required no sanction. *Ishri Prasad* v. *Shum Lal*, I. L. R., 7 All. 871 referred to.—EMPEROR

Sanction (*contd.*)—

v. ARJAN PRAMAKIK, I. L. R., 31 Cal. 664.

6. SANCTION — *Sanction to prosecute, power of Appellate Court to grant—Rule on District Magistrate to show cause—Right of opposite party to be heard—Criminal Procedure Code (Act V. of 1898), ss. 195, 439.*] The power of granting sanction by an Appellate Court ought to be exercised carefully, especially when sanction is refused by the Court of first instance. Where sanction had been granted by the Sessions Judge to prosecute the petitioner for the purposes of public justice, and a Rule had been issued by the High Court upon the District Magistrate only to show cause why the sanction should not be set aside, it was held at the hearing of the Rule that the opposite side had no *locus standi* and should not be heard.—JHALAN JHA *v.* BUCHAR GOPE, I. L. R., 31 Cal. 811.

Sanction for Prosecution—

1. SANCTION FOR PROSECUTION—*Terms of—Perjury, assignment of — Charges relating to several false statements in the same deposition — Mis-joinder — Reading deposition to witness in the presence of a pleader for one of several accused—Interpreter, omission to administer Oath to—Admissibility of Deposition and proof of Statement of the Witness on a subsequent trial for Perjury—Criminal Procedure Code (Act V. of 1898), ss. 195 cl. (4), 234, 300 cl. (1) and 537 — Penal Code (Act XLV. of 1860) s. 193—Oaths Act (X. of 1873) ss. 5 (b), 13.*] Although s. 195 cl. (4), does not in express terms render an assignment of perjury necessary, the application for sanction and the order granting it, in respect of statements contained in a lengthy deposition, should specify the particular statements alleged to be false, but the omission to do so is a defect cured by s. 537, unless a failure of justice has in fact been established. Where the alleged false statements were not set out in the order of sanction but were specified in the application for it and also in the charges subsequently framed:—*Held*, that the accused was not prejudiced by the omission in the sanction. *Balwant Singh* v. *Umed Singh*, I. L. R., 18 All. 203, *Queen* v. *Kartick Chunder Haldar*, 9 W. R. Cr. 58, *Queen* v. *Gobind Chunder Ghose*, 10 W. R. Cr. 41, *Queen* v. *Boodhun Ahir*, 17 W. R. Cr. 32. *In re Jivan Ambaidas* I. L. R., 19 Bom. 362, *Goberdhone Chowkidar* v *Habibullah*, 3 C. W. N. 35, and *Queen* v. *Soonder Mohooree*, 9 W. R. Cr. 25, referred to. The making of any number of false statements in the same deposition is one aggregate case of giving false evidence, and such charges cannot be multiplied according to the number of false statements contained in a deposition. *Mad. H. C. Pro., 1st May 1871*, 6 Mad. H. C. XXVII., followed. Section 360 (1) is sufficiently complied with if the deposition of a witness is read over to him in the presence of a pleader for one out of twenty-seven accused. A deposition so read over is admissible against the witness on his trial subsequently for giving false evidence. *Kamatchinathan Chetty* v. *Emperor*, I. L. R., 28 Mad. 30[illegible], and *Mohendra Nath Misser* v. *Emperor*, 12 C. W. N. 845, distinguished. The omission to administer an oath to an interpreter, under s. 5 (*d*) of the Oaths Act (X. of 1873), does not, by reason of s. 13, render the evidence of a witness whose evidence was interpreted by him inadmissible against the latter on his subsequent trial for giving false evidence. The only effect of the omission is to make it incumbent on the prosecution to prove the accuracy of the translation. *Queen* v. *Romsodoy Chuckerbutty*, 20 W. R. Cr. 19, approved. — RAKHAL CHANDRA LAHA *v.* EMPEROR, I. L. R., 36 Cal. 808.

2. SANCTION FOR PROSECUTION—*Revocation of the sanction—Appeal, pendency of—Prejudice to appellant—Doubtful prosecution—Criminal Procedure Code (Act V. of 1898) s. 195—Practice.*] Where the prosecution of a person for giving false evidence, forgery, and using as genuine a forged document in a suit, pending an appeal from the judgment passed therein, would delay and possibly defeat the appeal, and where the lower Appellate Court had declared that the evidence on which it was proposed to proceed was unsatisfactory to a great extent:—*Held*, that it was neither necessary nor desirable to grant sanction in such a case pending the appeal, but that the proper course would be to await the conclusion of the litigation and then to move the higher Courts to take action, if necessary, in the ends of public justice; and that the present sanction should, therefore, be revoked. *In re Shri Nana Maharaj*, I. L. R., 16 Bom. 729, *In re Devji valad Bhabani*, I. L. R., 18 Bom. 581, *Rex* v. *Ashburn*, 8 C. & P. 50, and *In re Muthukudam Pillai*, I. L. R., 26 Mad. 190, referred to. *In the Matter of the petition of Ramprasad Hasra*, B. L. R. Sup. 426, distinguished.—JADU LAL SAHU *v.* LOWIS, I. L. R., 34 Cal. 848.

3. SANCTION FOR PROSECUTION—*Initiation of proceedings—Prosecution by another without authority—Presidency Magistrate—Criminal Procedure Code (Act V. of 1898) ss. 195, 200 (b)—Practice.*] Under

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a sanction to prosecute expressly restricted to a certain person, the prosecution may be initiated by another person expressly authorized by him to whom the sanction was granted; but such authority must be a matter of record so as to enable the accused to challenge its validity both before the Magistrate and also on appeal or revision. A Presidency Magistrate is not excused by s. 200, cl. (*b*) of the Criminal Procedure Code from recording the necessary evidence of such authority.—KALI KINKAR SETT *v.* NRITYA GOPAL ROY, I. L. R., 32 Cal 469.

4. SANCTION FOR PROSECUTION—*Whether a sanction granted to a particular person could be availed of by some other person—Criminal Procedure Code (Act V. of 1898) s. 195.*] A sanction for prosecution expressly given to a particular applicant cannot be availed of by some other person against that person's wish and without his authority. *Giridhari Mondul* v. *Uchit Jha*, I. L. R., 8 Cal. 435, *Baperam Surma* v. *Gouri Nath Dutt*, I L. R, 20 Cal. 474, *In re Banarsi Das*, I. L. R., 18 All. 213, *Kali Kinkar Sett* v. *Nritya Gopal Roy*, 8 C. W. N. 883, and *Durga Das Rukhit* v. *Queen-Empress*, I. L. R, 27 Cal. 820, referred to.—JOGENDRA NATH MOOKERJEE *v.* SARAT CHANDRA BANERJEE, I. L. R. 32 Cal 351.

5. SANCTION FOR PROSECUTION—*Criminal Procedure Code (Act V. of 1898), s. 195, cl. (6)—"High Court," meaning of, in s. 195—Execution of time—Appeal, right of—Jurisdiction.*] An appeal lies from an order which purports to extend the period of an old sanction, but in effect is an order granting a new sanction to prosecute. "High Court" in s. 195 of the Criminal Procedure Code (V. of 1898) does not mean a Judge sitting on the Original Side of the Court, but it means a Civil Appellate Bench of the Court; a Judge sitting on the Original Side has consequently no jurisdiction to entertain an application for extending the time during which a sanction under s. 195 of the Code is to remain in force. Such time cannot be extended after it has expired. *In re Muthukundam Pillai*, I. L. R, 26 Mad. 190, and *Karuppana Servagaran* v. *Sinna Gounden*, I. L. R., 26 Mad. 480, dissented from. KALI KINKAR SETT *v.* DINOBANDHU NANDY, I. L. R., 32 Cal. 379.

6. SANCTION FOR PROSECUTION—*False charge—False information—Indian Penal Code (Act XLV. of 1860), ss. 182, 211—Criminal Procedure Code (Act V. of 1898) s. 195.*] The accused, a railway station-master, sent the following telegram to a

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head-constable of the Railway Police—"A bag of paddy was stolen from my goods-shed last night. Thief was caught. Please come, prosecute him." The head-constable inquired into the matter and reported it to be false. The Inspector of Police, in submitting the case to the District Magistrate, recommended that the station-master should be called upon to show cause why he should not be prosecuted under s. 182 or s. 211 of the Penal Code. A judicial inquiry was held by a Deputy Magistrate, and the District Magistrate sanctioned the prosecution of the accused. The accused was tried and convicted under s. 182 of the Penal Code, by an Assistant Magistrate with second class powers:—*Held*, that the sanction given by the District Magistrate was sufficient; that a prosecution for a false charge might be under s. 182 or s. 211 of the Penal Code, but if the false charge was a serious one, the proper course would be to proceed under s. 211. *Held*, further, that the present case not being a serious one, it was quite legal to prosecute the accused under s. 182 of the Code. *Bhokteram* v. *Heera Kalita*, I. L. R., 5 Cal. 184, *Russick Lal Mullick, In re*, 7 C. L. R. 382, followed. — EMPEROR *v.* SARADA PROSAD CHATTERJEE, I. L. R., 32 Cal 180.

7. SANCTION FOR PROSECUTION—*False statement before the Committing Magistrate retracted, and true evidence given, at the trial—Prosecution of Witness for contradictory statements—Consideration of circumstances under which false evidence was given and repudiated—Criminal Procedure Code (Act V. of 1898) s. 195.*] It would be dangerous to hold that the mere fact of contradictory statements having been made by a witness would justify the Court in granting sanction to prosecute him for giving false evidence. It is necessary to consider the circumstances under which they were made and repudiated. Where a witness was arrested and, after pointing out the spot where the stolen property was concealed, as alleged, by one of the accused, was released, but stayed with the police and waa examined the next day in Court, before the date fixed for the hearing of the case, the question having been put by a police officer in violation of s. 495 of the Criminal Procedure Code, and the evidence so given was false and was retracted at the trial, when he gave true evidence, alleging that he had been tutored and threatened by the same officer before his deposition in the lower Court:—*Held*, that having regard to the events leading up to the examination before the Committing Magistrate, the conditions under which it was conducted, and the fact that the witness did not persist in his false

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statements, but gave true evidence at the trial, sanction should not be granted.—EMPEROR *v.* TRIPURA SHANKAR SARKAR, I. L. R., 37 Cal. 618.

8 SANCTION FOR PROSECUTION—*Sanction refused by Munsif—Appeal—Sanction granted by Subordinate Judge—Jurisdiction—Criminal Procedure Code (Act V. of 1898), s. 195—Civil Courts Act (XII. of 1887), ss. 21 and 22—Civil Procedure Code (Act V. of 1908), ss. 24 (1) (a) and 115.*] A suit having been dismissed by the Munsif and, on appeal, by the Court of Appeal, the defendants applied to the Munsif for sanction to prosecute the plaintiffs for offences under ss. 468 and 471 of the Indian Penal Code. This application was refused, but, on appeal, the Subordinate Judge granted such sanction: *Held*, that the Court of the District Judge was the only Court to which such an appeal would properly lie. *Per* N. R. CHATTERJEA, *J.*—For the purposes of s. 195 of the Criminal Procedure Code, a Munsif is not subordinate to a Subordinate Judge. — RAM CHARAN CHANDA TALUKDAR *v.* TARIPULLA I. L. R., 39 Cal. 774.

9. SANCTION FOR PROSECUTION—*Jurisdiction — High Court, jurisdiction of— District Judge—Criminal Procedure Code (Act V. of 1898), ss. 195 (1) cl. (b) and 476—Revision—Civil Procedure Code (Act V. of 1908) s. 115.*] Neither the High Court nor the District Judge has power, under s. 476 of the Criminal Procedure Code, to direct a prosecution for an offence committed before a Provincial Small Cause Court. *Begu Singh* v. *Emperor*, I. L. R., 34 Cal. 551, referred to. The High Court itself is precluded from granting sanction in such a case under s. 195, sub-s. (1), clause (*b*) of the Criminal Procedure Code, as a Provincial Small Cause Court is not subordinate to it within sub-s. (7), cl (*c*), nor can it interfere under sub-s. (6) with an order of a District Judge revoking a sanction granted by such Small Cause Court. *Hamijuddi Mondol* v. *Damodr Ghose*, 10 C. W. N. 1026, *Girija Sankar Roy* v. *Binode Sheikh*, 5 C. L. J. 222, and *Muthuswami Mudali* v. *Veem Chetti*, I. L. R., 30 Mad. 382, referred to. Where the District Judge revoked a sanction granted by a Subordinate Court to a District Magistrate on the ground that 'a sanction could not be granted to a third party,' and initiated proceedings under s. 476 of the Criminal Procedure Code:—*Held*, that he acted illegally in the exercise of his jurisdiction, and that the High Court had power to set aside his order under s. 115 of the Code of Civil Procedure (Act V. of 1908). *Hamijuddi Mondal* v. *Damodar Ghose*, 10 C. W. N. 1026, distinguished.—IN RE RAM PRASAD MALLA, I. L. R., 37 Cal. 13.

Sanction for Prosecution (*contd.*)—

Sanction to Prosecute—

1. SANCTION TO PROSECUTE—*Registrar of the Small Cause Court—Judge—Validity of sanction—Power of the High Court on reference by Presidency Magistrate—Criminal Procedure Code (Act V. of 1898), ss. 195 (1), cl. (b); 432, 433 (1)—Fraudulent decree not set aside by a Civil Court—Penal Code (Act XLV. of 1860), s. 210.*] Where a plaintiff instituted a false suit for money, and fraudulently obtained an *ex-parte* decree therein before the Registrar of the Calcutta Small Cause Court, who subsequently left the country on furlough, and an application for sanction to prosecute him under ss. 209 and 210 of the Penal Code, in respect of such suit and decree, was made to the Officiating Chief Judge of the Court, and granted by him: *Held* that the sanction was valid. Ordinarily, as a matter of convenience and expediency, an application for sanction should be made to the Judge who tried the case, if he be present in the Court; but if he is not, it is open to the Court, that is, to any other Judge of the Court, to grant sanction. *In the Matter of Krishna Gobinda Dutt*, (9 C. W. N. 859) distinguished and dissented from. *Ambica Roy* v. *Emperor*, (2 C. L. J. 65 *n*) referred to. Upon a reference under s. 432 of the Criminal Procedure Code, the High Court deals only with the particular points of law stated for its opinion, but not with the facts of the case nor any other objection to the validity of the proceedings referred. The offence in s. 210 of the Penal Code is committed when the decree is fraudulently obtained, and the fact that the decree has not been set aside, though admissible to prove that there was no fraud, is not a bar to a prosecution under the section. — EMPEROR *v.* MOLLA FUZLA KARIM, I. L. R., 33 Cal. 193.

2. SANCTION TO PROSECUTE — *Criminal Procedure Code (Act V. of 1898), s. 197—Necessity for sanction to prosecute public servant—Cases in which the fact that accused is a public servant is a necessary element in the offence—City of Madras Municipal Act (Mad. Act I. of 1884), s. 341.*] Under s. 341 of the City of Madras Municipal Act, any person bringing or causing to be brought timber within the City of Madras without a license, obtained on payment of a fee, is liable to a fine. The Superintendent of the Gun Carriage Factory in Madras, who is an officer holding a commission in the Royal Artillery, brought or caused to be brought timber within the aforesaid limits without license. On a complaint being lodged

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against him under the section, it was contended that he was a public servant within the meaning of s. 197 of the Code of Criminal Procedure, and that the Court could not take cognizance of the offence inasmuch as the sanction referred to in s. 197 had not been obtained :—*Held* that sanction was not necessary, as the offence charged was not one which could be committed only by a public servant nor did it involve as one of its elements that it had been committed by a public servant. *Nundo Lal Basak* v *Mitter* (I. L. R., 26 Cal 852), followed.—THE MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS *v* MAJOR BELL. I. L. R., 25 Mad. 15.

3 SANCTION TO PROSECUTE—*Appeal—Revocation of sanction by Joint Magistrate specially authorised to hear appeals, legality of—Jurisdiction—Subordinate Court—Criminal Procedure Code (Act V. of 1898), ss. 195 and 407.*] Where a Joint-Magistrate who had been authorized by the District Magistrate to hear appeals under s. 407, cl. (2) of the Criminal Procedure Code, on appeal revoked a sanction to prosecute granted under s 195 of the Code by an Assistant Magistrate exercising second-class powers: *Held*, that the existence of the special power which was conferred on him by the District Magistrate did not constitute the Joint Magistrate the Court to which appeals ordinarily lay under s. 195, cl. (7) from a Magistrate exercising second-class powers, and that his order revoking the sanction must be set aside as having been made without jurisdiction.—SADHU LALL *v.* RAM CHURN PASI, I. L. R., 30 Cal. 394.

4. SANCTION TO PROSECUTE — *Appeal against order of District Court granting sanction—Criminal Procedure Code (Act V. of 1898), s. 195, cls. 6, 7—Power of High Court on such appeal.*] An appeal lies to the High Court against an order of the District Judge granting sanction under clauses 6 and 7 of s. 195 of the Code of Criminal Procedure. Where such order has revoked the sanction granted by the Munsif for prosecution under certain sections of the Penal Code but granted sanction to prosecute under other sections, and it is competent to the High Court on appeal, therefrom not only to revoke the sanction granted but also to grant the sanction refused.—KANNAMBATH IMBICHI NAIR *v.* MANATHANATH RAMAN NAIR, I. L. R., 29 Mad. 122.

5. SANCTION TO PROSECUTE — *Criminal Procedure Code, ss. 195, 537—Sanction, want of, only an irregularity and not fatal to the prosecution.*] The general provisions of s. 195 of the Code of Criminal

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Procedure ought not to be so construed as to nullify the special provisions of s. 537 (*b*). The want of sanction required by s. 195 of the Code of Criminal Procedure is not fatal to a prosecution unless the accused is prejudiced thereby. *Raj Chunder Mozumdar* v. *Gour Chunder Mozumdar* (I. L. R., 22 Cal 176), dissented from.—ISMAL ROWTHER *v.* SHUNMAGAVELU NADAN, I. L. R., 29 Mad 149.

6. SANCTION TO PROSECUTE—*Criminal Procedure Code, s. 195.*] When an application is made to a Court under s. 195 of the Code of Criminal Procedure for sanction to prosecute although it is not legally necessary that notice of such application should be given to the opposite party before orders are passed thereon, nevertheless it is highly desirable that such notice should be given. *Pampapati Sastri* v. *Subba Sastri*, (I. L. R., 2 Mad. 210); *In re Bal Gangadhar Tilak*, (4 Bom. L. R. 750); *Mangar Ram* v *Behari*, (I. L. R., 18 All. 358) referred to.—INAYAT ALI *v.* MOHAR SINGH, I. L. R., 28 All. 142.

7. SANCTION TO PROSECUTE—*Criminal Procedure Code, s. 528—Transfer—Penal Code, s. 193—False evidence—Affidavit of accused person in support of an application for transfer.*] *Held* that where an accused person applies for the transfer of the case pending against him to some other Court, supporting his application by an affidavit, he cannot, or at least ought not to be prosecuted under s. 193 of the Penal Code in respect of statements made therein. *In the Matter of the petition of Barkat*, (I. L. R., 19 All. 200) followed.—EMPEROR *v.* BINDESHRI SINGH, I. L. R., 28 All 331; 3 A. L. J. 98.

8. SANCTION TO PROSECUTE—*Order directing prosecution—Order framed in the alternative held to be bad—Revision.*] A District Magistrate having before him an application for the grant of sanction to prosecute a certain person for perjuries alleged by the applicants to have been committed by that person in the Court of the District Magistrate, passed an order in the following form:—"I . . . District Magistrate, Bulandshahr, hereby charge you . . . that you on the 21st day of June, 1902 at Bulandshahr, in the course of the hearing of the appeal, *Shib Dayal* v. *K.-E.*, stated in evidence before this Court," etc., etc., (here follow the specific assignments) "*or* I sanction proceedings against you under s. 182, Indian Penal Code, with giving false information," etc., etc. "I make the case over

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to B. Dipchand for disposal. B. Hardeo Sahai will furnish P. R. in Rs. 500, and one surety in like amount to appear when called on." *Held* that this order being framed in the alternative, was a bad order, and could not be acted upon.—HASAN SHAH *v.* HURDEO SAHAI, I. L. R., 25 All. 234.

9. SANCTION TO PROSECUTE—*Information by accused of offence—Report by police of falsity of information—Sanction by District Magistrate on police report—Judicial proceeding — Subordination of police officer to District Magistrate—Complaint—Criminal Procedure Code (Act V. of 1898), ss. 195, 480—Penal Code (Act XLV. of 1860), s. 182.*] The accussd gave certain information to the police, who, after investigating the matter, reported that the information given was false, and constituted an offence under s. 182 of the Penal Code. The District Magistrate on this sanctioned the prosecution of the accused, who was convicted and sentenced under that section. The accused appealed against the conviction and sentence. His appeal was heard and dismissed by the District Magistrate, who had previously sanctioned his prosecution. On revision, the accused contended that the District Magistrate having sanctioned his prosecution on the police-report was not competent to hear the appeal. *Held* that s. 487 of the Criminal Procedure Code did not apply, as the offence was not committed before the District Magistrate, nor was it in the contempt of his authority, nor brought to his notice in the course of a judicial proceeding. *Held*, further, that althongh police-officers in a district were generally subordinate to the District Magistrate, the subordination contemplated by s. 195 of the Criminal Procedure Code was not such subordination. That Subordination contemplated some superior officer of police. Nor could the report of the police-officer be regarded as a complaint under s. 195 of the Criminal Procedure Code, and therefore no proper sanction had been obtained. The defect, however, was cured by s. 537 of the Criminal Procedure Code, as no failure of justice had been occasioned—RAMSORY LALL *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 452.

10. SANCTION TO PROSECUTE — *Application necessary for—Court, Collector under Land Acquisition Act whether—Power of such Collector to administer oath or require verification—Deputy Collector under Land Acquisition Act—Judicial officer—Revenue Court—Over-estimate of value of land—*

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False statement—False evidence—Forgery—Revision—Rule, Hearing of—Discretion of High Court to decide matters for which rule prayed for, but not granted—Criminal Procedure Code (Act V. of 1898), ss. 190, 195, 439, 476, 526—Penal Code (Act XLV. of 1860), ss. 193, 196, 199, 467, 468, 471—Land Acquisition Act (I. of 1894), Part VIII., s. 53.] Sanction under s. 195 of the Criminal Procedure Code should be given only on application made for it by some person who may desire to complain of the particular offence, and whose complaint could not be entertained without such sanction. *In the Matter of Banarsi Das* (I. L. R., 18 All. 213) and *Baperain Surma v. Gouri Nath Dutt* (I. L. R., 20 Cal. 474) referred to. The expression "the Court" in the Land Acquisition Act does not include a Collector, nor is there any authority given to the Collector to administer an oath or to require a verification. It is a false statement made under a verification that constitutes an offence under s. 193 of the Penal Code, not a verification oath or solemn affirmation. The Deputy Collector, acting under the Land Acquisition Act, is not a judicial officer; he cannot properly be regarded as a Revenue Court within the terms of s. 476 of the Criminal Procedure Code; his proceedings under the former Act are not regulated by the Code of Civil Procedure, nor is he right in requiring a petition put in before him to be verified in accordance with that Code, so as to make any false statement punishable as perjury. The Deputy Collector is not in a position to pass any final order in the matter of value of the land or the right to claim the price fixed; a party dissatisfied can claim a reference to the Civil Court, whose duty it is to settle the matter in dispute judicially; therefore, to subject parties, who claimed the right to such a reference, to a criminal prosecution, when the matters on which the Deputy Collector had formed an opinion as a Revenue Officer under the Land Acquisition Act, must be submitted to the determination of a Court, is obviously premature and improper, and is almost certain to operate very prejudicially towards them in the trial before the Civil Court of the same matter. In proceedings under the Land Acquisition Act what may be found to be an exaggeration or over-estimate of the value of land cannot properly constitute a false statement, which would demand a prosecution for perjury, and the fact that some years before the land was offered for sale at a much lower price is no sufficient ground for imputing such an offence. Discretion of the High Court in revision at the hearing of a rule to consider and decide matters in respect to

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which a rule had been prayed for, but not granted.—DURGA DASS RUKHIT *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 820.

11. SANCTION TO PROSECUTE—*Administrator-General of Bengal—Administrator to estate of deceased person — Offence by Public servant—Criminal Procedure Code (Act V. of 1898), s. 197—Calcutta Municipal Act (Ben. III. of 1899), ss. 320, 574.*] The Administrator-General of Bengal, who was appointed by the High Court administrator to the estate of a deceased person, was served with a notice by the Calcutta Municipal Corporation under s. 320 (*i*) cl. (*b*) of Bengal Act III. of 1899, requiring him to remodel a privy on certain premises belonging to that estate. In consequence of his not complying with the requisition, he was prosecuted under s. 574 of the Act. At the trial it was contended that as the Administrator-General of Bengal was a public servant not removeable from his office without the sanction of the Government of India, he could not, under the terms of s. 197 of the Criminal Procedure Code, be prosecuted without the sanction of such Government:—*Held*, that the sanction of Government was not necessary for the institution of the prosecution, s. 197 of the Criminal Procedure Code not being applicable to a case like the present; that the Administrator-General of Bengal was in charge of the premises, in respect of which the offence charged was said to have been committed, not by virtue of his office, but by virtue of his appointment by the Court as administrator to the estate of the deceased; and that he was charged with having committed the offence in the latter capacity. *Nando Lal Basak* v. *N N. Mitter*, (I. L. R., 26 Cal. 852), followed.—CORPORATION OF CALCUTTA *v.* ADMINISTRATOR GENERAL OF BENGAL, I. L. R., 30 Cal. 927.

12. SANCTION TO PROSECUTE—*Criminal Procedure Code (Act V. of 1898), s. 195, sub-ss. (6) and (7)—Subordinate authority—Sonthal Parganas Justice Regulation (V. of 1893), s. 15.*] For the purposes of s. 195 of the Code of Criminal Procedure, the Court of the Deputy Commissioner of Sonthal Parganas shall be deemed to be subordinate to the Court of the Commissioner of Bhagalpur. Accordingly, an application against an order of the Deputy Commissioner of Sonthal Parganas, revoking a sanction given by the Subordinate Judge of Godda under s. 195 of the Code of Criminal Procedure should be made to the Commissioner of Bhagalpur, and not to the High Court.—MUNNA LAL CHOWDHRY *v.* PADMAN MISSER, I. L. R., 30 Cal. 916.

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13. SANCTION TO PROSECUTE—*Public servant — Substantive offence — Abetment—Fresh sanction—Criminal Procedure Code (Act V. of 1898), ss. 195, 197, 230—Penal Code (Act XLV of 1860), ss 468, 109.*] The Inspector General of Registration, Bengal, wrote a letter to the District Registrar of Tippera directing the prosecution of a Sub-Registrar on charges under ss. 417 and 468 of the Penal Code. The Sub-Registrar was tried and convicted under ss. 468, 109 of abetment of forgery for the purpose of cheating. At the trial it was contended on behalf of the accused that there could be no conviction for abetment when sanction had been given for prosecution for the substantive offence only: *Held*, that the letter of the Inspector General of Registration was a sufficient sanction to justify the conviction, and that no fresh sanction was necessary under s. 230 of the Criminal Procedure Code.—PROFULLA CHANDRA SEN *v.* EMPEROR, I. L. R., 30 Cal. 905.

14. SANCTION TO PROSECUTE—*Criminal Procedure Code (Act V. of 1898), s. 195—Notice to person to prosecute whom sanction is sought—Proceedings before Sessions Court—Proper exercise of discretion.*] A Sessions Court, when granting sanction to prosecute under s. 195 of the Criminal Procedure Code, should so frame the proceedings before it as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. Although notice is not invariably necessary in cases under the section referred to, the grant of an order sanctioning prosecution is a judicial act, and there may be circumstances (such as in those cases in which there has been a difference of opinion as to the desirability for granting sanction) in which a proper discretion cannot be said to have been exercised unless the persons sought to be prosecuted have been given an opportunity to be heard. An order of a Sessions Judge, sanctioning a prosecution, containing nothing from which the High Court could conclude that he had directed his mind to the real question in such cases, namely, whether there was a *prima-facie* case on which a prosecution could be instituted with a fair chance of success, the High Court revoked the sanction.—PAMPAPATI SASTRI *v.* SUBBA SASTRI, I. L. R., 23 Mad. 210.

15. SANCTION TO PROSECUTE—*Criminal Procedure Code (Act V. of 1898), ss. 195, 476—Order by Deputy Magistrate sanctioning prosecution—Complaint by Deputy Magistrate—Jurisdiction of Sessions Court to interfere.*] A Deputy Magistrate, having decided that certain witnesses (who had

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given evidence before himself and before two other Magistrates on different occasions, relating to charges of rioting and causing hurt), had wilfully committed perjury on one occasion or another, ordered them to be prosecuted for perjury, and bound them over to take their trial. The Sessions Judge set aside the said order, deeming it undesirable that sanction to prosecute should be given under the circumstances. *Held* that, whether the Deputy Magistrate had intended to pass an order under s. 476, or to make a complaint under s. 195 (1) (*b*) of the Criminal Procedure Code, the Sessions Judge had no power to interfere: also that the power of revoking given under s 195 (*b*) is only in respect of sanctions, and not of complaints —QUEEN-EMPRESS *v.* ANKANNA, I. L. R., 23 Mad. 205.

16. SANCTION TO PROSECUTE—*Criminal Procedure Code (Act V. of 1898), s. 197—Charge against Village Magistrate for alleged offence while acting not in a judicial capacity.*] A Village Magistrate, having been apprised of a disturbance in his village, forcibly separated the combatants, one of whom thereupon preferred a charge against him of causing hurt The complaint was taken by the Sub-Magistrate upon his file without any previous sanction of the Government or other authority mentioned in s. 197 of the Criminal Procedure Code The Village Magistrate raised the objection that the prosecution could not legally be proceeded with until such sanction had been first obtained. The Sub-Magistrate held that such sanction was unnecessary, and kept the case on his file, and commenced to enquire into it. The Village Magistrate presented a petition to the District Magistrate raising the same ground of objection, whereupon the District Magistrate quashed the whole of the proceedings, holding that the Sub-Magistrate had no jurisdiction to try the case against a village-officer without sanction having been first obtained. *Held* that sanction was not necessary under s. 197 of the Criminal Procedure Code. The Village Magistrate, while preventing an offence, was not acting in the capacity of a Judge or a public servant not removable from office without the sanction of Government, and therefore the sanction referred to had no application. *Held also* that the order of the District Magistrate quashing the proceedings of the Sub-Magistrate was passed without jurisdiction. *Semble* that a Village Magistrate exercising jurisdiction, and trying an offender under Regulation XI of 1816, is a Judge within the meaning of s. 197 of the Code of Criminal Procedure and s. 19 of the Penal Code.—KANDASAMI CHETTI *v.* SOLI GOUNDAN, I. L. R., 23 Mad. 540.

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17. SANCTION TO PROSECUTE—*Criminal Procedure Code (Act V. of 1898), s. 195 (4).*] Clause (4) of s. 195 of the Code of Criminal Procedure applies only to cases in which, at the time of granting sanction to prosecute, the offender is uncertain or unknown. Where there is no doubt as to whom the prosecution is to be directed against, the offender should be named.—JOHN MARTIN SEQUEIRA *v.* LUJA BAI, I. L. R., 25 Mad. 671.

18. SANCTION TO PROSECUTE—*Criminal Procedure Code (Act V. of 1898), ss. 195 (7), 407 (2)—Court to which appeals ordinarily lie—Refusal to accord sanction—Appeal to Magistrate who has been directed and empowered to hear appeals under s. 407 (2).*] A Magistrate who has been directed and empowered to hear appeals under the provisions of s. 407 (2) of the Code of Criminal Procedure is not the "Court to which appeals ordinarily lie" within the meaning and for the purposes of s. 195 (7) of the Code—(BENSON, J., dissenting.)—EROMA VARIAR *v.* EMPEROR, I. L. R., 26 Mad. 656.

Search-warrant—

1. SEARCH-WARRANT — *Criminal Procedure—Procedure in Magistrate's Court—Information filed against an accused, but no summons issued—Case must be disposed of by Magistrate although no summons applied for by complainant—Property seized by police under warrant—Claim by third party—Inquiry by Magistrate as to claim of third party—Criminal Procedure Code (Act V. of 1898), s. 593.*] Where an information is filed against a person, the Magistrate is bound to dispose of the case, and if no evidence is offered against the person accused, he must be discharged. The complainant, by omitting to take out a summons against such person, cannot keep a charge hanging over him for an indefinite time The summons is merely the means of procuring the attendance of the accused, but if he appears of his own accord without a summons, he is entitled to require that the complaint shall either be proceeded with or dismissed. Where property is seized under a search-warrant, the Magistrate must proceed to make enquiry so as to enable him to dispose of it. If a third party appears and alleges that the property seized is his, and is not the subject-matter of the offence charged, the Magistrate is bound to hear that party, and, if necessary, restore the property to its owner. Magistrates must take care that the proceedings in their Courts are conducted with such reasonable expedition as will prevent the parties from being improperly harassed by

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undue delay. *In re Ratanlal Rangildas* (I. L R., 17 Bom. 748) doubted.—IN THE MATTER OF LAKSHMAN GOVIND NIRGUDE, I. L. R., 26 Bom. 552.

2. SEARCH WARRANT — *Information — Absence of pending proceedings at the time of issue—Validation of illegal warrant:— Re-issue of search warrant on judicial cognizance taken—Taking cognizance on information duly recorded—Nature of information — Sufficiency of information to justify initiation of proceedings* — Bona fides *of proceeding — Transfer—Criminal Procedure Code* (*Act V. of 1898*), *ss 96, 98, 100* (*1*) (*c*), *526 and 537.*] The issue of a search warrant under s. 96 of the Criminal Procedure Code, when there is no investigation, inquiry, trial or other proceeding under the Code, as is mentioned in s. 94, pending at the time, is illegal, though the Magistrate had received information of the commission of an offence, but had not acted judicially on it, when he issued such warrant. If, however, he subsequently takes cognizance under s. 190 (1) (*c*) and then re-issues the warrant, it is legal. *In re Harilal Buch,* I. L. R., 22 Bom. 949, followed. A warrant illegally issued under s 96 cannot be treated as valid under s. 98 by the operation of s 537 of the Code. Section 537 does not give legal effect to a defective warrant, but only validates a finding, sentence or order, defective in procedure. The information, on which a Magistrate takes cognizance under s. 190 (1) (*c*), must be recorded. *Thakur Pershad Singh* v. *Emperor,* 10 C. W. N. 775, followed. It is nowhere laid down how much of such information the accused is entitled to have recorded, but, though all the allegations necessary to prove the offence have not been made out, if enough has been laid before the Magistrate to make out a *prima facie* case, he is justified in initiating proceedings, and the High Court will not interfere. Proceedings instituted on statements which, though alleging no specific dates, are not vague or indefinite as to the facts mentioned therein, are not bad. If proceedings were instituted by a Magistrate from personal feelings of enmity derived from a long past dispute between one of his subordinates and the accused, and he was consciously straining the law to injure the latter, it would be the duty of the High Court to set them aside, but the Court would not do so, if the Magistrate was only acting mistakenly. Case transferred on the facts —RASH BEHARY LAL MANDAL *v.* EMPEROR I. L. R., 35 Cal. 1076.

Search without Warrant—

SEARCH WITHOUT WARRANT — *Power of the police to search the house of an absconding offender generally for stolen property on information of dacoity against him—Legality of Search—Criminal Procedure Code (Act V. of 1898), ss. 94 and 165 — Rioting — Common object to resist such search—Right of private defence—Penal Code (Act XLV. of 1860) ss. 99, 147, 323, 353.*] Section 165 of the Criminal Procedure Code does not authorize a general search for stolen property in the house of the absconding offender, against whom an information has been laid of having committed a docoity. It refers only to specific documents or things which may be the subject of a summons or order under s. 94 of the Code, and the latter does not extend to stolen articles or any incriminating document or thing in the possession of the accused. *Ishwar Chandra Ghosal* v. *Emperor*, 12 C. W. N. 1016, referred to. Where a Sub Inspector, on receiving information of the commission of a dacoity, searched the house of one of the alleged offenders, accompanied by the complainant and the village officers, but without a search warrant, whereupon they were beaten by the petitioners who were charged with, and convicted of, rioting, with the common object of resisting the search, assault and causing hurt, under ss. 147, 323 and 353 of the Penal Code:—*Held*, that the search was illegal, and that, the common object having failed, the conviction under s. 147 was bad.—BAJRANGI GOPE *v.* EMPEROR, I. L. R., 38 Cal. 304.

Security for keeping the Peace—

1. SECURITY FOR KEEPING THE PEACE— *Criminal Procedure Code, ss. 107, 117— Evidence—Evidence of general repute not available in such cases.*] It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute. Where a person is called upon to furnish security to keep the peace evidence of general repute cannot be made use of to show that such person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility.—EMPEROR *v.* BIDHYAPATI, I. L. R., 25 All. 273.

2. SECURITY FOR KEEPING THE PEACE— *Order—Omission of express finding as to commission of offence within the section— Illegality—Jurisdiction—Criminal Procedure Code* (*Act V. of 1898*), *ss. 106 and 423 —Penal Code* (*Act XLV. of 1860*), *s. 379.*] Where a Subordinate Magistrate convicted the prisoner under s. 379 of the Penal Code

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of theft and the District Magistrate on appeal merely affirmed the conviction and added to his judgment an order under s 106 of the Criminal Procedure Code binding over the petitioner to keep the peace: *Held*, that he was not competent to pass such an order except on an express finding that the petitioner had committed an offence within the terms of s 106.—KINOO SHEIKH *v.* DARASTULLAH MOLLAH, I. L. R., 29 Cal. 393.

3. SECURITY FOR KEEPING THE PEACE—*Magistrate appointed in the district—Limits of jurisdiction—Criminal Procedure Code (Act V. of 1898), ss. 12 and 107.*] A Magistrate appointed to act as a Magistrate in a district has, unless his powers have been restricted to a certain local area, jurisdiction over the entire district. *Held*, therefore, where a Sub divisional Officer in a district instituted proceedings under s. 107 of the Criminal Procedure Code against a person in his sub-division and the District Magistrate transferred the case to the Court of a Deputy Magistrate of the first class appointed to act in the district, holding his Court at the head quarters of the district, that the Deputy Magistrate had jurisdiction to try the case or to institute fresh proceedings against that person.—SARAT CHUNDER ROY *v.* BEPIN CHANDRA ROY, I. L. R., 29 Cal. 389.

Security for Good Behaviour—

1. SECURITY FOR GOOD BEHAVIOUR—*Criminal Procedure Code (Act V. of 1898), s. 118—Discretion of Court—Security demanded not to be excessive.*] Where a Magistrate, acting under s. 118 of the Code of Criminal Procedure, required securities to an amount which the person to be bound over was totally unable to furnish, in consequence of which he remained in jail for some two months and a half, the Court *held* that the Magistrate had not exercised a proper discretion in the matter and reduced the amount of the security. *Queen-Empress* v. *Rama* (I. L. R., 16 Bom. 372) followed —QUEEN-EMPRESS *v.* RAZA ALI, I. L. R., 23 All. 80.

2. SECURITY FOR GOOD BEHAVIOUR—*Criminal Procedure Code (Act V. of 1898), ss. 110, 123—Term for which imprisonment in default of finding security should be ordered.*] Although it is within the competence of a Sessions Judge, acting under section 123 (3) of the Code of Criminal Procedure, to direct that a person who has been ordered to give security shall, on failure to give security, be imprisoned for any term not exceeding three years, yet it is advisable that the term of imprisonment in default ordered under that section should always be the same as the period for which the security is directed to be given.—KING-EMPEROR *v.* KARIM-UD-DIN BEG, I. L. R., 23 All. 422.

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3. SECURITY FOR GOOD BEHAVIOUR—*Criminal Procedure Code (Act V. of 1898), ss. 110 et seqq.; 437—Power of District Magistrate to re-open proceedings on the same record after the discharge of the person called upon to show cause by a Magistrate of the first class.*] *Held*, that it is competent to the Magistrate of the district, in the case of a person who has been called upon, under s. 110 of the Code of Criminal Procedure, by a Magistrate of the first class, to show cause why he should not furnish security for good behaviour, and has been discharged by such Magistrate under s. 119 of the Code, to institute fresh proceedings against such person upon the basis of the record that was before the first class Magistrate. *Queen-Empress* v. *Mutasaddi Lal* (I. L. R., 21 All. 107), *Queen-Empress* v. *Ratti* (Weekly Notes, 1899, p. 203), *Queen-Empress* v. *Ahmad Khan* (Weekly Notes, 1900, p. 206), and *Queen-Empress* v. *Iman Mondal* (I. L. R., 27 Cal. 662) referred to. —KING EMPEROR *v.* FYAZ-UD-DIN, I. L. R., 24 All. 148.

4. SECURITY FOR GOOD BEHAVIOUR—*Criminal Procedure Code (Act V. of 1898), ss. 110, &c.—Power of Court to assign geographical limits within which the Sureties required must reside.*] *Held*, that a Court in ordering security for good behaviour to be given with Sureties is competent to assign some geographical limits within which the sureties required must reside *Queen-Empress* v. *Rahim Bakhsh* (I. L. R., 20 All. 206) referred to.—EMPEROR *v.* NOBBU KHAN I. L. R., 24 All. 471.

See WITNESS, 2.

5. SECURITY FOR GOOD BEHAVIOUR—*Criminal Procedure Code, ss. 123 and 340—Reference to the Sessions Judge—Notice to be given of proceedings before the Judge to the persons required to find security.*] Where under s. 123 of the Code of Criminal Procedure reference is made to the Sessions Judge in the case of a person called upon by a Magistrate to find security for a term exceeding one year, it is expedient, and highly desirable for the ends of justice, that a date should be fixed for the hearing of such reference, and that notice of such date should be given to the person concerned. *Jhoja Singh* v. *Queen-Empress*, (I. L. R., 23 Cal. 493); *Nakhi Lal Jah* v. *Queen-Empress*, (I. L. R., 27 Cal. 656), followed. *Queen-Empress* v. *Ajudhia*, (Weekly Notes, 1898, p 60), and *Queen-Empress* v. *Mutasaddi Lal*, (I. L. R., 21 All. 107), referred to.—EMPEROR *v.* GIRAND I. L. R. 25 All. 375.

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6. SECURITY FOR GOOD BEHAVIOUR—*Criminal Procedure Code (Act V. of 1898), ss. 110, 118—Fresh proceedings taken immediately after the period of a previous security bond has expired—Locus pœnitentiæ.*] R was bound over to be of good behaviour for a period of three years, which term expired on the 13th of June, 1905. On the 20th of June 1905, fresh proceedings were started against him under s. 110 of the Code of Criminal Procedure. *Held*, that the interval was not long enough to give R any opportunity of showing that he was willing to adopt an honest livelihood, and that evidence relating to events prior to the 13th of June 1905, was inadmissible in support of a fresh order under s. 110.—EMPEROR *v.* RANJIT, I. L. R., 28 All. 306; 3 A. L. J. 29.

7. SECURITY FOR GOOD BEHAVIOUR—*Criminal Procedure Code, s. 110—Subsequent conviction—Forfeiture of bond.*] *Held* that where a person has given security for good behaviour and his security is subsequently forfeited, the amount of his forfeited bond may be exacted, but he cannot be also committed to prison for the unexpired portion of the term for which security had been taken.—EMPEROR *v.* JAGDEO SINGH, I. L. R., 28 All. 629.

8. SECURITY FOR GOOD BEHAVIOUR—*Imprisonment in default of security—Reference to Sessions Judge—Accused—Notice—Right to be heard by pleader—Order of confirmation—Grounds for such order—Criminal Procedure Code (Act V. of 1898), ss. 110, 123, 340.*] Where a reference is made to the Sessions Judge under s. 123 of the Criminal Procedure Code, he is bound to give notice to the person concerned, and also to hear his pleader, if he should be so represented. The term "accused" in s 340 of the Criminal Procedure Code applies to a person who is liable under s. 123 of that Code to imprisonment in default of giving security. The Sessions Judge, in confirming the order of a Magistrate under s. 123 of the Criminal Procedure Code, in regard to the imprisonment of a person in consequence of his being unable to furnish the necessary security, is bound to find a special ground on which the order is passed, having special reference to s. 110 of that Code. It is not sufficient where he only finds in general terms that it is for the interests of the community at large that such person should be bound over to be of good behaviour.—NAKHI LAL JHA *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 656.

9. SECURITY FOR GOOD BEHAVIOUR—*Security for good behaviour from habitual offenders—Acts committed by persons in performance of duties as burkandazes in zemindari—Habitual association—Joint trial—Criminal Procedure Code (Act V. of 1898) ss 110, 112, 117, 118, 537.*] Certain *burkandazes* employed at a *kutchery* of the Bijni estate, who were alleged to have committed acts of extortion and other acts of oppression in the performance of their duties, were called upon to execute bonds for their good behaviour on the grounds (1) that they habitually commit extortion; (2) that they habitually commit or attempt to commit or abet the commission of offences involving a breach of the peace; (3) that they are dangerous persons so as to render their being at large without security hazardous to the community. They were tried jointly by the Magistrate under s. 117 of the Criminal Procedure Code, and each of them was ordered to execute a bond with sureties for his good behaviour for three years. *Held* that, even supposing the Magistrate was right in considering that there was habitual association between these persons in regard to the first and second grounds, there certainly would be no such connection between them in regard to their characters, so as to make them dangerous persons, and thus to render their being at large without security hazardous to the community, and that proceedings should have been separately taken against each of them. S. 110 of the Criminal Procedure Code is not applicable where certain acts amounting to extortion are committed by certain persons in the performance of their duties as *burkandazes* in a zemindari, as it cannot be said that these persons are in the habit of committing extortion as individual members of the community, because if they were discharged by the zemindar, or ceased to be in his employ, the acts would no longer be committed, it being no longer to their interests to do such acts in the interest of their employer, and they certainly would not be likely to commit them in their own private capacities. The object of enabling a Magistrate to take security for good behaviour is for the prevention and not for the punishment of offences.—HARI TELANG *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 781.

10. SECURITY FOR GOOD BEHAVIOUR—*Jurisdiction of Magistrate over person not residing within his jurisdiction—Reputation—Criminal Procedure Code (Act V. of 1898), s. 110.*] It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is residing within the limits of such jurisdiction, is found to be a person of the description given in s. 110 of the Criminal Procedure Code, that the Magistrate can take action under that section, and it is not contemplated that the Magistrate in such a case should issue a

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warrant so as to pursue the person concerned into another jusisdiction. Under the terms of s. 110 of the Criminal Procedure Code, the reputation which the person is found to have means the reputation of that person in the neighbourhood in which he resides.—KETABOI *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 993.

11. SECURITY FOR GOOD BEHAVIOUR—*Security for good behaviour from habitual Offenders—Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accused to a—Criminal Procedure Code (Act V. of 1898), ss. 110, 117, and 191.*] Where a Magistrate has framed a proceeding under s 110 of Criminal Procedure Code against a party and has proceeded in some measure, if not mainly, on his own knowledge of the character of that party, such Magistrate is not a proper person to proceed with the trial under s. 117 of the Court, and inquire into the truth of the information upon which action has been taken.—ALIMUDDIN HOWALDAR *v.* EMPEROR, I. L. R., 29 Cal. 392.

12. SECURITY FOR GOOD BEHAVIOUR—*Surety-bond — Acceptance by Subordinate Magistrate of bond—Cancellation of such bond by District Magistrate—Jurisdiction—Criminal Procedure Code (Act V. of 1898) ss. 110 and 125.*] Where the security-bond of the petitioner, who had been bound over to be of good behaviour, and the surety-bonds of his sureties had been accepted by the Sub-divisional Magistrate, and the District Magistrate on receiving a police-report, stating that one of the sureties "was not at all a man of substance to stand surety for Rs. 100, he cannot be entrusted to stand surety of a bad character," cancelled the security-bond of the petitioner under s. 125 of the Code of Criminal Procedure. *Held*, the order of the District Magistrate was made without jurisdiction.—PANCHOO GAZI *v.* EMPEROR, I. L. R., 29 Cal. 455.

13. SECURITY FOR GOOD BEHAVIOUR—*Security for good behaviour from habitual offenders—Thief—Habitual thieves and dacoits—Desperate and dangerous characters—Evidence—Specific Acts—General repute—Criminal Procedure Code (Act V. of 1898), ss. 110 and 117.*] A charge under cl. (f), s. 110 of the Criminal Procedure Code, can not be proved by general reputation, but by definite evidence. To prove a charge under s. 110 that a person is by habit a thief and a dacoit, or that he is so desperate and dangerous as to render his being at large without security hazardous to the community, there should be

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proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character. It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not be safely acted upon, but is also likely to work, serious prejudice.—KALAI HALDAR *v.* EMPEROR, I L. R., 29 Cal 719.

14. SECURITY FOR GOOD BEHAVIOUR—*Offences involving a breach of the peace, meaning of—Immoral and indecent acts—Criminal Procedure Code (Act V. of 1898), ss. 106 and 110, cl. (e).*] The words "offences involving a breach of the peace" in s. 110, cl. (*e*), of the Criminal Procedure Code mean offences in which a breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace. Where a person, who was found by the Magistrate to be addicted to acts of immorality in attempting to seduce women and behaving indecently and immodestly towards them, was bound over to give security for good behaviour under s. 110, cl. (*e*), of the Code. *Held*, that the order for security should be set aside, as the offences were not such as involved a breach of the peace within the meaning of that clause.—ARUN SAMANTA *v.* EMPEROR, I. L. R., 30 Cal. 366.

15. SECURITY FOR GOOD BEHAVIOUR—*Order embodying substance of information—Transfer—Refusal to re-call prosecution witnesses for cross-examination—Limitation of time for examination of defence witnesses—Restriction of counsel's address—Right to cross-examine witnesses called by the Court—Evidence of general repute—Association with bad characters—Criminal Procedure Code (Act V. of 1898), ss. 110, 112, 117, 192, 256, 257, 528, 529 (f), 540.*] The setting forth of the information received from a police officer in the order under s 112 of the Criminal Procedure Code in terms of clauses (*a*) to (*f*) of s. 110 is a sufficient statement of the substance of the information as required by the former section. It is not necessary to give a list of the prosecution witnesses in such order. S. 192 cl. (1) is not restricted to cases of offences only, but is wide enough to include cases under Chapter VIII. of the Code. Even if there was no power under the section to transfer such cases, the whole proceedings would not, by reason of s. 529 (*f*), be void. *Akbar Ali Khan* v. *Domi Lal* 4 C. W. N. 821, followed. S. 256 of the

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Code does not apply to an enquiry under s. 117. The prosecutor and the accused are both equally entitled to a full cross-examination of witnesses called by the Court under s 540 on matters relevant to the enquiry. The Court cannot restrict the cross-examination of such witnesses by either party to the subjects on which it had examined them. Where an attempt was being made to protract the examination-in-chief of the defence witnesses to a most unnecessary extent so as to delay if not to prevent, the final termination of the case, and the address of counsel had proceeded for fifteen days it was held that the Magistrate was not unreasonable in fixing a time limit for the examination-in-chief of the remaining witnesses, and for the close of the address. In dealing with cases under Chapter VIII. of the Code the Magistrate ought, especially where no previous conviction is proved, to test the prosecution evidence with great care. Evidence of association with bad characters, who were always suspected of being concerned in dacoities and many of whom were during the period of association bound down under s. 110 of the Code or convicted of dacoity and theft, at various times and especially in most cases shortly before, and near the place of, a dacoity, is a sufficient basis for an order under s. 110. Evidence of witnesses from villages where dacoities had occurred, but which were at some distance from the village where a person resided, as to his character in connection with the dacoities, is admissible as evidence of general repute under s. 117 of the Code *Rai Isri Pershad* v. *Queen-Empress*, I. L. R., 23 Cal. 621, distinguished.—CHINTAMON SINGH *v* EMPEROR, I. L. R., 35 Cal. 243.

16. SECURITY FOR GOOD BEHAVIOUR—*Joint inquiry against members of a gang—Admissibility of evidence of association with a gang and of acts by the members thereof—Inquiry into the fitness of Sureties—Rejection on the report of a subordinate Magistrate or police officer—Order of Judge on reference, contents of—Criminal Procedure Code (Act V. of 1898) ss. 117 (4), 122, 123 (3), 367, 424—Evidence Act (I. of 1872) s. 11.*] An order under s. 123 (3) of the Criminal Procedure Code should show on the face of it that the Sessions Judge has considered the case of each accused on its own merits and separately from that of the others, even if such order need not contain all the details required by s. 367. *Jamait Mullick* v. *Emperor*. I. L. R., 35 Cal. 138, referred to. A joint inquiry under s. 117 of the Criminal Procedure Code against the members of a gang formed for the purpose of habitually cheating in concert is not

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illegal under sub-s. (4), though they were not all concerned together in each of the various acts alleged against them. When the question is whether a person is a habitual cheat, the fact that he belonged to an organization formed for the purpose of habitually cheating in concert is relevant under s. 11 of the Evidence Act, and it is open to the prosecution to prove against each person that the members of the gang do cheat. A surety cannot be called upon to state, in writing what influence he has over the accused nor can a Magistrate refuse to accept him on his failure to do so. *Per* RYVES *J.* (COXE *J.*, *contra*). Under s. 122 of the Criminal Procedure Code the Magistrate passing an order for security should himself hold the inquiry into the fitness of the proposed sureties, and he cannot decide the matter merely on the report of a subordinate Magistrate or of a police officer, which is not legal evidence. *Queen-Empress* v. *Prithi Pal Singh*, All. W. N. 154, *Emperor* v. *Tota*, I. L. R., 25 All. 272, *Emperor* v. *Balwant*, I. L. R., 27 All 293, *Re Abdul Khan*, 10 C. W. N. 1027, and *Suresh Chandra Basu* v. *Emperor*, 3 C. L. J. 575, followed.—KALU MIRZA *v.* EMPEROR, I. L. R., 37 Cal. 91.

17. SECURITY FOR GOOD BEHAVIOUR—*Evidence of acts committed several years before the proceedings—"Offences involving breach of the peace"—Acts of high-handedness not accompanied with actual breaches of the peace—Liability of zemindar for acts of his naib and lathials committed in his interest—Abetment of offences involving a breach of the peace—Criminal Procedure Code (Act V. of 1898), s 110 (e).*] Evidence of acts falling within the scope of s. 110 of the Criminal Procedure Code, but committed several years before the date of the institution of the proceedings thereunder, is admissible *Wahid Ali Khan* v *Emperor*, 11 C. W. N. 789, followed. To bring a case within the section a person must be found to have habitually committed, attempted to commit, or abetted the commission of, offences of which a breach of the peace is an ingredient. *Arun Samanta* v. *Emperor*, I. L R., 30 Cal. 366, followed. Where the only conviction against a zemindar was one under s. 150 of the Penal Code and there was evidence that he with his lathials (or his servants acting under his orders), took articles of food from bazar vendors, that he assembled lathials to enforce the performance of *puja* by his own *purohit*, threatened a witness with violence for deposing against him, and, with his lathials, uprooted some trees, cut the crops of his opponents, molested rival fishermen in boats and attempted to stop a marriage

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procession, but no breach of the peace was committed or complaint made by the opposite party:—*Held*, that such acts did not involve a breach of the peace so as to support a charge of habitually committing offences within cl. (e). But where the zemindar's naib had led several riots in his master's interest and had been convicted in several such cases, and there was evidence that certain lathials were always employed to help his cause:—*Held*, that he had habitually abetted the commission of offences mentioned in that clause. *Kasi Sundar Roy* v. *Emperor*, I. L. R., 31 Cal. 419, followed. A Magistrate should be careful to see that s. 110 is not employed by private persons to wreak vengeance under the ægis of a Crown prosecution.—KALI PRASANNA BOSE *v.* EMPEROR, I L. R., 38 Cal. 156.

18. SECURITY FOR GOOD BEHAVIOUR—*Return of absconding suspect home on withdrawal of warrant, and residence in his father's house without taking steps to conceal himself to commit an offence—Relevancy of evidence of previous connection with a criminal conspiracy or concealment outside the trying Magistrate's jurisdiction—Ostensible means of subsistence — Support by father possessing substance — Jurisdiction of Magistrate to require a person to give an account of his presence while in another jurisdiction — Criminal Procedure Code (Act V. of 1898), s. 109, cls. (a), (b)*] Clause (*a*) of s. 109 of the Criminal Procedure Code should be read in its entirety. The concealment referred to therein must be with a view to committing some offence. Where a person, against whom a warrant had been issued, absconded from home for two years, but returned thereto after its withdrawal, and was found living in his father's house, without having taken any particular steps to conceal himself for the purpose of committing any offence thereafter, the fact of previous connection with a criminal conspiracy or of present correspondence with criminals outside the Magistrate's jurisdiction, is not relevant under s. 109, though it might form basis or a substantive proceeding under s. 110. A person cannot be called on to furnish security under s. 109 in respect of an alleged temporary concealment in his father's house unconnected with any intent to commit an offence, nor with any previous concealment outside the Magistrate's jurisdiction. As long as a young man, out of employment, is staying in the house of his father, who is a man of substance and able, if necessary, to support him, he cannot be held to be without ostensible means of subsistence. Where the account a person gives of his presence within the limits of a Magis-

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trate's jurisdiction is satisfactory, *e.g.*, that he has returned to, and is living in, his father's house in strict seclusion on the withdrawal of a warrant against him, he cannot be called upon by such Magistrate to give an account of his presence in any other jurisdiction. — SATISH CHANDRA SIRKAR *v.* EMPEROR, I. L. R., 39 Cal. 456.

Security to Keep the Peace—

See POSSESSION, 4.

1. SECURITY TO KEEP THE PEACE—*Criminal Procedure Code (Act V. of 1898), s. 106—Appellate Court cannot bind over to keep peace when lower Court not one of the class referred to in the section, and no breach of the peace committed.*] An accused person cannot be bound over to keep the peace under s. 106 of the Code of Criminal Procedure unless he is convicted of an offence of which a breach of the peace is a necessary ingredient and unless it is found that a breach of the peace has actually occurred. An Appellate Court cannot exercise the power under the section when the accused has not been convicted by a Court such as is referred to in the section.—MUTHIAH CHETTI *v.* EMPEROR, I. L. R., 29 Mad. 190.

2. SECURITY TO KEEP THE PEACE—*Criminal Procedure Code, ss. 107, 145—Attempt to eject by force a person in possession of immoveable property — Jurisdiction*] Where certain persons wrongfully and without any *bona fide* claim to possession, sought to eject another by force from the possession of certain land, and a breach of the peace was imminent, it was *held* that a Magistrate might legally take action against the aggressors under s. 107 of the Code of Criminal Procedure, and it was not necessary, on the finding that their claim was not *bona fide*, to take proceedings under s. 145 of the Code—EMPEROR *v.* RAM BARAN SINGH, I L. R., 28 All. 406.

3. SECURITY TO KEEP THE PEACE—*Criminal Procedure Code, ss. 107, 514.*] Where a person bound over to keep the peace for a certain period under s. 107 of the Criminal Procedure Code, committed the offence of abduction within the said period: *Held* that the bond is not forfeited thereby.—MUHAMMAD *v.* KING EMPEROR, 7 P. R. 1906, Cr.

4. SECURITY TO KEEP THE PEACE—*Wrongful act—Ascertainment of the rights of the parties—Which party should be bound down—Criminal Procedure Code (Act V. of 1898), s. 107—Riparian right—Right to khuntagari.*] The preventive jurisdiction of a Magistrate under s. 107 of the Criminal Poocedure Code must be exercised with caution. If the existence of a right claimed by one

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arty in a proceeding under the section is denied by the opposite party, and is not qutie patent, the Magistrate should always endeavour to ascertain for the purposes of the oceeding their respective rights and bili.ies, and not in all cases treat them matters proper for the Civil Court exsively. Where a doubt exists as to the istence of the rights and obligations, spectively, of the parties, the Magistrate ould bind both parties down. Where, owever, there is no doubt, the party in he wrong should be bound down, and not he one who has the legal right No order of the Magistracy should in any way encourage the infringement of a legal right, or prevent the exercise of such right in a legal way, or do away with, even temporarily, the performance of an obligation. The right to the foreshore is a riparian right and ordinarily g es with the land above, and the proprietor has *prima facie*, the right of *khuntagari* or tolls. *Dhunput Singh* v. *Denobundhu Saha*, 9 C. L. R. 279, followed. — DINDAYAL MOZUMDAR *v.* EMPEROR, I. L. R., 34 Cal. 935.

5. SECURITY TO KEEP THE PEACE—*Order passed on consent of a party to be bound down without evidence taken — Criminal Procedure Code* (*Act V. of 1898*), *ss. 107, 117.*] The proceeding under section 107 of the Criminal Procedure Code is a precautionary measure and not a trial for an offence, and in such a proceeding no one should be bound down, unless it is shown that he is about to commit a breach of the peace. Where, therefore, a person, called upon to show cause why he should not be bound down under the section, appeared before the Magistrate and agreed to be bound down, whereupon the Magistrate directed him to execute a bond without taking any evidence at all. *Held*, that the order was illegal.—RAM CHANDRA HALDAR *v.* EMPEROR, I. L. R., 35 Cal. 6.

6. SECURITY TO KEEP THE PEACE—*Joint inquiry against several persons—Necessity of specific findings against each—Criminal Procedure Code (Act V. of 1898), ss. 107, 118.*] Where a joint inquiry has been held against several persons, who were called upon to furnish security to keep the peace under s. 107 of the Criminal Procedure Code, there must be a specific finding against each person of acts rendering him individually liable under the section before an order can be passed binding him down. —AJODHYA PRASAD SINGH *v.* EMPEROR, I. L. R., 35 Cal. 929.

7. SECURITY TO KEEP THE PEACE—*Dispute relating to possession of land—Institution of proceedings — Discretion of*

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Magistrates—Criminal Procedure Code (*Act V of 1898*), *ss. 107, 144, 145.*] Where a dispute relating to possession of land is likely to cause a breach of the peace, a Magistrate has a discretion to proceed either under s. 107 or under ss. 144 and 145 of the Criminal Procedure Code. *Saroda Prosad Singh* v. *Emperor*, 7 C. W. N. 142, not followed. *King-Emperor* v. *Basiruddin Mollah*, 7 C. W. N. 746 and *Belagal Ramacharlu* v. *Emperor*, I. L. R. 26 Mad. 471, followed.—SHEORAJ ROY *v.* CHATTER ROY, I. L. R., 32 Cal. 966.

8. SECURITY TO KEEP THE PEACE—*Jurisdiction — Bond, cancellation of, before actual execution—Criminal Procedure Code* (*Act V. of 1898*), *ss. 107, 125—Appeal—Revision.*] S. 125 of the Criminal Procedure Code does not confer upon a District Magistrate either an appellate or revisional jurisdiction in respect of orders binding down persons to keep the peace made by Courts subordinate to his own, but it confers only an original jurisdiction. After a bond to keep the peace has been executed, a District Magistrate may hold, for sufficient reasons, that it is no longer necessary and cancel it; but he has no power to declare that it was never necessary. There is no appeal from an order requiring security to keep the peace.—BARKA CHANDRA DEY *v.* JANMEJOY DUTT, I. L. R., 32 Cal. 948.

Sedition—

1. SEDITION—*"Swaraj"—Incitement to secure "swaraj"—Security for good behaviour—Seditious language at a public meeting—Criminal Procedure Code (Act V. of 1898), s. 108—Indian Penal Code (Act XLV. of 1860), s. 124A.*] The term "*swaraj*" does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is "home rule" under the Government. The incitement of the members of a public meeting to exert themselves to secure "*swaraj*" does not amount to the offence of sedition under s. 124A of the Penal Code, and is consequently not within the purview of s. 108 of the Criminal Procedure Code.—BENI BHUSHAN ROY *v.* EMPEROR, I. L. R., 34 Cal. 991.

2. SEDITION—*Government authority for prosecution—Sufficiency of authority—Complaint — Regularity of proceedings — Criminal Procedure Code* (*Act V. of 1898*) *ss. 4(h), 196, 200—Presumption of regularity of official acts—Evidence Act* (*I. of 1872*) *s. 114—Re-publication of seditious articles —Penal Code* (*Act XLV. of 1860*) *ss. 124A, 499, Exception (4)—Printer, liability of—Act XXV. of 1867, s. 7.*] Orders under

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s. 196 of the Criminal Procedure Code should be expressed with sufficient particularity and with strict adherence to the language of the section. But the real question in such cases is whether the prosecution was instituted under the authority of Government. An order purported to accord sanction to prosecute the editor, manager and the printer of a newspaper under s. 124A of the Indian Penal Code without specifying their names, and containing a misdescription of the seditious article. A police officer received it from the Commissioner of Police, and under his directions applied for and obtained warrants from the Chief Presidency Magistrate against the accused. He was examined by the Magistrate, but not on oath, and his deposition was not recorded. On the day of the trial the same police officer filed an amended order under s. 196 of the Criminal Procedure Code correcting the error in the name of the article in the previous orders: *Held*, (i) that the prosecution was regularly instituted. *Queen-Empress* v. *Bal Gangadhar Tilak*, I. L. R., 22 Bom. 112, referred to. *Kali Kinkar Sett* v *Nritya Gopal Roy*, I. L. R., 32 Cal 469, and *Reg* v. *Judd*, 37 W. R. 143, distinguished. (ii) That the order under s. 196 of the Criminal Procedure Code was not a "complaint" within s. 4(*h*), but that the application of the police officer for warrants in respect of an offence under s. 124A of the Indian Penal Code, coupled with his oral allegations, though not made on oath not recorded, amounted to a "complaint." *Queen-Empress* v. *Sham Lall*, I. L. R., 14 Cal. 707, followed. (iii) That the presumption under s. 114 of the Evidence Act supplied any omissions either as to the method of the communication of the order to the prosecuting officer, or in the order-sheet of the Magistrate. (iv) That the article in question was incompatible with the continuance of the Government established by law, and was seditious. It is the duty of every citizen to support the Government established by law, and to express with moderation any disapprobation he may feel of its acts and measures. (v) That the re-publication of seditious articles from another newspaper, one of which only was filed as an exhibit by the prosecution and used in the case against the editor of that paper on his trial for sedition, was not a report of the proceedings of a Court of justice, and was not justifiable under the circumstances. (vi) That the presumption contained in s. 7 of Act XXV. of 1867, in the absence of evidence to the contrary, rendered the printer liable for seditious matters publisned in his paper.—APURBA KRISHNA BOSE *v.* EMPEROR, I. L. R., 35 Cal. 141.

Sedition (*contd.*)—

3. SEDITION—*Incitement to insurrection—Reasonable criticism of Government—Penal Code (Act XLV. of 1860), s. 124A—Admissibility of seditious articles not forming the subject of the charge—Liability of printer for seditious matter in a newspaper—Act XXV. of 1867, s. 7.*] A reasonable criticism of the action of Government in a particular matter without any attempt to create hatred or contempt against it is not sedition, but an incitement to insurrection falls within the scope of s. 124A of the Penal Code. Seditious articles published in the same newspaper, not forming the subject of the charges, on which the prisoner is being tried at the time, are admissible to show the intention of the person, who printed or published the latter. S. 7 of Act XXV. of 1867 makes the printer or publisher responsible for everything appearing in the newspaper, whoever the author of the seditious articles may be, unless he can prove absence from the office of the paper in good faith and without knowledge that during his absence seditious matter would be published. It is not absence in good faith for the printer to go away, but with full knowledge of what is going to happen in his absence and for the purpose of shirking his liability. *Queen-Empress* v. *Bal Gangadhar Tilak*, I. L. R., 22 Bom. 112, dissented from. *Ramasami* v. *Locanada*, I. L. R., 9 Mad. 387, approved of. — EMPEROR *v.* PHANENDRA NATH MITTER, I. L. R., 35 Cal. 945.

4. SEDITION — *Wholesale imputation of bribery against ministerial and police officers and of neglect on the part of Government to inquire into such abuses — Attempt to promote enmity between different classes—Inveighing against Hindus and Mohamedans alike—Penal Code (Act XLV. of 1860) ss. 124A and 153A — Convictions at one trial under ss. 124A and 153A of the Penal Code—Appeal to the High Court, Criminal Procedure Code (Act V. of 1898), ss. 35(3), 408 prov. (c).*] A single expression that the people of Bengal are trodden under the feet of outsiders used incidentally in a newspaper article, otherwise innocuous, does not constitute the whole seditious. An article imputing wholesale bribery to the ministerial officers of the Law Courts and to the lower officers of the police force, and expressing grave doubts as to whether the Government ever inquire into such abuses, so much is it occupied with investigations of boycott, dacoity and sedition, published when sedition is rife and the minds of people excited, may have the effect of creating a feeling that the Government is not doing its duty, and exceeds the limits of fair comment and is seditious,

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irrespective of the question of the truth of the allegations. Where the writer of an article inveighed both against the Babus and Meahs as professing brotherhood with the poor Mahomedan ryots and then robbing them, and referred to the alleged conduct of Christian missionaries towards their converts, by way of illustration, without any deliberate attempt to excite one class against another, the conviction under s. 153A of the Penal Code was set aside as bad in law. *Per* RICHARDSON, J.—If a particular article is charged as being seditious on the ground that it says more than appears on the face of it, it is the duty of the prosecution to show that it has, in fact, the guilty meaning or intent attributed to it. *Semble*: An appeal lies under ss. 35 (3) and 408, prov. (*c*), directly to the High Court from a conviction and separate sentences under ss. 124A and 153A of the Penal Code passed on the same trial—JOY CHANDRA SARKAR *v.* EMPEROR, I. L. R., 38 Cal. 214.

5. SEDITION—*Liability of declared printer and publisher of a newspaper for seditious matter appearing therein—Absence during the period of the publication of the seditious articles, bona fides not made out—Printing Presses and Newspapers Act* (*XXV. of 1867*) *s 7.*] The declared printer and publisher of a newspaper containing seditious articles is responsible for them unless he makes out, on sufficient evidence, that he had in fact nothing to do with them. Where the editor of a newspaper was convicted and sentenced under s. 124A of the Penal Code, and the accused made his declaration as printer and publisher thereafter, and continued so to act after the editor had resumed work on release from jail, and further allowed his name to appear as such, though he was absent from the town of publication of the paper when certain seditious articles appeared therein and engaged during the period in his own private business without taking any interest in the paper, it was *held* that he had not made out the *bona fides* of his absence, and was, therefore, legally responsible for the articles. — SURENDRA PROSAD LAHIRI *v.* EMPEROR, I. L. R., 38 Cal. 227.

6. SEDITION—*Attack on rival political party but not on Government established by law in British India—Limits of legitimate criticism of acts and measures of Government—Construction of letter or article in a newspaper — Admissibility of articles in other issues not forming the subject of the charge when the identity of the writer is not proved—Penal Code* (*Act XLV. of 1860*) *s. 124A—Evidence Act* (*I. of 1872*) *s. 15—Liability of registered printer and publisher*

Sedition (*contd.*)—

—Printing Presses and Newspaper Act (*XXV. of 1867*) *s. 7.*] A letter or an article in a newspaper containing an attack on a rival political organization and not on the Government established by law in British India, is not seditious within the meaning of s. 124A of the Penal Code. A man may criticise or comment on any act or measure of the Government legislative or executive, and freely express his opinion on it. He may express the strongest condemnation of such measures, and he may do so severely and even unreasonably, perversely or unfairly provided he does not, whether in his comments on measures or not, hold up the Government itself to hatred and contempt. *Queen-Empress* v. *Bal Gangadhar Tilak*, I. L. R., 2 Bom. 112, approved of. It is not sedition for a writer to describe the Reform Scheme as being monstrous and misbegotten, because it is not founded on democratic principles and not a genuine reform or a genuine initiation of constitutional progress, or to assert that some of the police officials and the judiciary are corrupt, unscrupulous and partial, or to state that if an organisation which he believes to be lawful is suppressed by proclamation it is arbitrary, and that in such case the responsibility will not rest on him for the madness which crushes down open and legal political activity in order to give a desperate and sullen nation into the hands of fiercely enthusiastic and unscrupulous forces, or to inculcate the doctrine of passive resistance or refusal of co-operation with the Government within legal limits, or to describe the British Courts in India as ruinously expensive. In construing a newspaper article its meaning must be taken from the article as a whole and not from isolated passages. Words and expressions such as *arbitrary executive* must not be looked at as if the writer was a constitutional lawyer instead of a journalist. *Queen-Empress* v. *Bal Gangadhar Tilak*, I. L. R., 22 Bom. 112, approved of. Articles not forming the subject of the charge and appearing in other issues of the same paper, are not admissible to show the intention of the writer in the article complained of in the absence of proof of his identity. The declared printer and publisher of a letter or article in a newspaper is amenable to the law merely on proof that it is calculated to excite feelings of disaffection, hatred or contempt against the Government, but the prosecution must prove either that the writer does in fact excite such feelings or that his intention was to do so. The writer of an article may be guilty of sedition no matter how guardedly he attempts to conceal his real object, but the registered printer and publisher cannot be punished if the concealed object

Sedition (*contd.*)—

is not established by the evidence on the record. *Queen-Empress* v. *Amba Prasad*, I. L. R., 20 All. 55, referred to.—MANOMOHAN GHOSE *v.* EMPEROR, I. L. R., 38 Cal. 253.

7. SEDITION — *Publication, proof of—Necessity of proving, posting or printing and publishing under the directions of the accused, when it is shown that the handwriting is his, and that the seditious matter was actually printed and published—Seditious manuscript transmitted by post but intercepted before it reached addressee—Attempt to commit sedition—Penal Code (Act XLV. of 1860), s. 124A.*] It is not necessary, in order to establish the fact of publication of seditious matter transmitted through the post-office, on a charge under s. 124A of the Penal Code, to prove the actual posting, nor that it was printed and published under the directions of the accused. If the seditious writing is shown to be in the handwriting of the accused, and it is further proved that the contents were in fact printed and published, there is sufficient evidence of publication by him: *Regina* v. *Lovett* 9 C. & P. 462, followed. The sending through the post of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others, when the same was intercepted by another person and never reached the addressee, constitutes an attempt within the purview of s. 124A of the Penal Code.—SURENDRA NARAYAN ADHICARY *v.* EMPEROR I. L. R., 39 Cal. 522.

8. SEDITION — *Publication — Handwriting, proof of—Admissibility and value of expert opinion not based on comparison made in Court with admitted or proved handwriting of the person alleged—Penal Code (Act XLV. of 1860), s. 124A—Evidence Act (I. of 1872), s. 45.*] On a charge under s. 124A of the Penal Code the sending of a pamphlet by post, addressed to a private individual not by name, but by designation as the representative of a large body of students, amounts to publication. It is necessary for the admission of the evidence of a handwriting expert, under s. 45 of the Evidence Act, that the writing with which the comparison is made should be admitted or proved beyond doubt to be that of the person alleged, and that the comparison should be made in open Court in the presence of such person. *Cresswell* v. *Jackson*, 2 F. & F. 24, *Cobbet* v. *Kilminster*, 4 F. & F. 490, and *Phoodee Bibee* v. *Gobind Chander Roy*, 22 W. R. 272, referred to.—SURESH CHANDRA SANYAL *v.* EMPEROR, I. L. R., 39 Cal. 606.

Sentence—

SENTENCE—*Enhancement of sentence—Criminal Procedure Code (Act V. of 1898), s. 423—Alteration of sentence on appeal—Effect of alteration.*] A sentence of three months' imprisonment was, on appeal, altered by the Sessions Judge to one month's imprisonment with a fine of Rs. 20, or, in default of payment, to 15 days' rigorous imprisonment. This alteration of sentence was held not to amount to an enhancement of the sentence such as was contrary to the terms of s. 423 of the Criminal Procedure Code. No general rule can be laid down to determine what is or is not an enhancement of sentence, when only a portion of a sentence is altered to a punishment of a lesser degree of severity. In each case the Court has to consider what is the effect of the alteration. *Queen-Empress* v. *Chagan Jagannath* (I. L. R., 23 Bom. 439) dissented from.—RAKHAL RAJA *v.* KHIRODE PERSHAD DUTT, I. L. R., 27 Cal. 175.

Sessions Court—

See COMMITMENT.

SESSIONS COURT—*Criminal Procedure Code, s. 288—Evidence—Statements made before Magistrate retracted before Court of Session.*] In a capital case, certain witnesses, who had stated before the committing Magistrate that they had seen the accused striking the deceased, withdrew their statements before the Court of Session and gave evidence exculpating the accused. The Sessions Judge, considering the evidence given before him by these witnesses to be untrue and acting under s. 288 of the Code of Criminal Procedure, admitted in evidence the statements of these witnesses made before the committing Magistrate. *Held* that such statements were rightly admitted and when admitted were on the same footing as the other evidence on the record. *Queen-Empress* v. *Dhan Sahai*, (I. L. R., 7 All. 862), *Queen-Empress* v. *Jeochi*, (I. L. R., 21 All. 111), *Queen-Empress* v. *Nirmal Das*, (I. L. R., 22 All. 445), and *Umar* v. *Empress* (22 Panj. Rec., Cr. J., 132), referred to.—EMPEROR *v.* DWARKA KURMI, I. L. R., 28 All. 683; 3 A. L. J. 852.

Special Constables—

SPECIAL CONSTABLES—*Grounds of appointment—Police Act (V. of 1861) ss. 17, 19.*] The circumstances, which justify an order under s. 17 of the Police Act (V. of 1851), are that a disturbance of the peace is apprehended, and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place, where the disturbances are apprehended. Where upon the report of a Sub-Inspector of Police that there was a dispute about certain land, in which the petitioners were

Special Constables (*contd.*)—

concerned, which was likely to lead to a breach of the peace, the Magistrate appointed them special constables under s. 17 of Act V. of 1861, and they refused to receive their letters of appointment, but were afterwards told that their services would not be necessary:—*Held*, that the order of appointment of the petitioners under s 17 and their convictions under s. 19, were illegal. NANDA KISHORE SINGH *v.* EMPEROR, I. L. R., 35 Cal. 454.

Special Sentence—

SPECIAL SENTENCE—*Held* that the special sentence provided for by s 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases—those in which crimes of an atrocious nature are exposed, or in which offences have been committed under aggravated circumstances. *Queen* v. *Mahomed Akhir* (12 W. R., Cr. R., 17) followed. — EMPEROR *v.* AMRITA LAL, I. L. R., 29 All. 25.

Stamp—

STAMP—*Sale of Court-fee stamp*—"*Sale*"—*Exchange—Transfer of stamp on promise that one of equal value would* be *returned*—*Court-fees* (*Act VII. of 1870*), *s. 34, cl.* (*3*).] Where a mukhtear who had purchased a court-fee stamp for a client, transferred it to another client, the latter having agreed to return to the mukhtear, another court-fee stamp of the same value, and was convicted of an offence under s. 34 of the Court-fees Act:—*Held*, that there had been no 'sale' of the stamp witnin the meaning of s. 34 of the Court-fees Act (VII. of 1870), and that the conviction should be set aside. —KEDAR NATH SHAHA *v.* EMPEROR, I. L. R., 30 Cal. 921.

Stamp Act—

1. STAMP ACT — *Act* (*II. of 1899*), *ss. 27, 64, (a)—Execution of document—Not Containing statement of facts affecting duty—Stamp.*] Certain property was sold for Rs. 20,000 to one R, who paid Rs. 1,000 in cash and agreed to give the vendors credit for Rs. 19,000 to be drawn against as required. Shortly afterwards the parties agreed to rescind the contract and R resold the property to his vendors, giving them a a conveyance in which the consideration was stated to be Rs. 1,000 in cash, no mention being made of the extinction of his liability to pay the remaining Rs 19,000 *Held* on these facts that R had committed an offence within the purview of s. 64 (*a*) of the Indian Stamp Act, 1899.—EMPEROR *v.* RAMESHAR DAS, I. L. R., 32 All. 171.

2. STAMP ACT — *Act* (*II. of 1899*), *s. 33—Seizure of documents under search-warrant—Document that "comes" before a Magistrate.*] Complaint having been

Stamp Act (*contd.*)—

made against a person for having committed offences under ss. 64 (*c*) and 68 (*c*) of the Stamp Act of 1899, the Magistrate issued a search-warrant, under which certain documents were seized and impounded under s. 33 (2) of the Act. On its being contended that his action in impounding them was illegal, because the documents did not come before him in the performance of his functions within the meaning of s. 33 (*1*). *Held*, that the word "comes" is sufficiently wide to include the production of documents under a search-warrant.—KING-EMPEROR *v.* BALU KUPPAYYAN, I. L. R., 25 Mad. 525.

3. STAMP ACT — *Act (I. of 1879), ss. 58, 61, 64, —"Signing otherwise than as a witness," &c., Meaning of—Liability of agent authorised to sign on behalf of principal—Granting of unstamped receipt— Refusal to grant stamped receipt by firm—Liability of members of such firm—"Person," Meaning of—Proof of demand of receipt.*] The expression "signing otherwise than as a witness," &c., as used in s. 61 of the Stamp Act, means the writing of a person's name by himself or by his authority, with the intent of authenticating a document as being that of the person whose name is so written. An ordinary agent authorized to sign on behalf of his principal would fall within this description, and consequently within the purview of the section. Where, therefore, a person signed a firm's name to certain letters under the authority of the firm, the circumstance that the body of the letters were written at the dictation of the manager of the firm was held not to be sufficient to distinguish his case from that of any other agent. The term "person" in ss. 61 and 64 of the Stamp Act includes the members of a trading partnership. So where certain persons, members of a firm carrying on business in Calcutta as general dealers (which firm had acknowledged the receipt of certain sums of money from one L, and had refused to grant him a stamped receipt), were charged under s. 61 of the Stamp Act with having granted an unstamped receipt, and under s. 64 of that Act with having refused to grant a duly stamped receipt, it was held that their liability depended on whether they were, in contemplation of law, the persons who signed the letters of acknowledgment or refusal to give the receipt, and not on whether they were present at the writing of the letters, or knew of the writing of them, provided that it was established by evidence that a requisition for a receipt had been made under s. 58 of that Act.—QUEEN-EMPRESS *v.* KHETTER MOHUN CHOWDHRY, I. L. R., 27 Cal. 324.

Stamp Act (*contd.*)—

4. STAMP ACT — *Act (I. of 1879), ss. 61, 67—Penal Code (Act XLV. of 1860), s. 40—Defrauding Government of stamp-revenue by a contrivance or device not otherwise specially provided for — Receipt of unstamped document—Abetment of an offence under s. 61 of Stamp Act, 1879.*] Two letters were written to petitioner in which the writer recommended him to advance sums of money to the bearers of the letters, and bound himself to repay those sums, if lent, in case of default on the part of the borrowers. The loans were made by petitioner, who kept the letters. A prosecution having been subsequently commenced against petitioner under s. 67 of the Stamp Act, 1879, for defrauding Government of stamp-revenue by an illegal device, and he having been convicted on the ground that, when the loans were granted, the documents became letters of guarantee, and, as such, liable to stamp duty, *held* that the execution of a document which on its face required to be and was not stamped, could not be said to be "an act, contrivance, or device not specially provided for by this Act, or any other law for the time being in force;" and that punishment for the act of the executant of such a document, if it were punishable at all, was provided for under s 61 of the Stamp Act, 1879, and it could not therefore be dealt with under s. 67. Also that the act of a person receiving an unstamped document might amount to abetment of an offence, having regard to s. 61 of the Stamp Act, 1879, and to the definition of an offence" in s. 40 of the Penal Code, and, if so, would be an act provided for by "any other law for the time being in force," and so not within the terms of s. 67 of the Stamp Act, 1879.—QUEEN-EMPRESS *v.* SOMASUNDARAM CHETTI, I. L. R., 23 Mad. 155.

5. STAMP ACT—*Act (II. of 1899) s. 62 (1) (b)—Stamp—Award — Unstamped award signed by parties to submission—Party signing "otherwise than as a witness."*] Where certain parties to an arbitration, who had signed the submission to arbitration, also signed the award, not as witnesses, but under the heading "signature of the heirs," and the award was not stamped, it was *held* that such parties did not fall within the purview of s. 62, clause (1) (*b*), of the Indian Stamp Act, 1899, as persons "executing or signing otherwise than as witnesses."—EMPEROR *v.* BRIJ PAL Saran, I. L. R., 32 All 198.

6. STAMP—*Act (II. of 1899) s. 65—Receipt—Money remitted by postal money order and receipt signed on post office form—Further receipt not exigible from payee.*] Where money is remitted by postal money order and the payee has signed the receipt in duplicate on the post office form he cannot legally be compelled to give a further receipt to the payer, and his refusal to do so will not render him liable under s. 65 of the Indian Stamp Act, 1899.—EMPEROR *v.* BALMAKUND, I. L. R., 34 All. 192.

Statutes—

STATUTES—*24 and 25, Vic., Cap. CIV., s. 15—Criminal Procedure Code, ss. 435 (3) and 145—High Court's powers of revision.*] *Held* that s. 15 of the Charter Act, 24 and 25 Vic., Cap. CIV., does not override s. 435 of the Code of Criminal Procedure, so as to enable the High Court in the exercise of its powers of superintendence to interfere with an order passed by a Court having jurisdiction under Chapter XII. of the Code, interference with which in revision is excluded by s. 435 (3). *Hurbullubh Narain Singh* v. *Luchmeswar Prasad Singh*, I. L. R., 26 Cal. 188, and *Mahadeo Kunwar* v. *Bisu*, I. L. R., 25 All. 537, referred to.—MAHARAJ TEWARI *v.* HAR CHARAN RAI, I. L. R., 26 All. 144.

Statutes, Construction of—

STATUTES, CONSTRUCTION OF—*Bombay City Police Act (Bom Act IV. of 1902), s. 12, 16, 18.*] In construing an expression of doubtful import occurring in a Statute, the Court may well have regard to considerations outside the language of the Act.—EMPEROR *v.* ATMARAM, I. L. R., 31 Bom. 480.

Street—

"STREET"—*Discharge into drains not forming part of street—Definition of street.*] A defendant was charged under section 4 of the Madras District Municipalities Act with allowing offensive matter to flow from his house into a street. The matter flowed into a drain or ditch constructed along the side of the roadway. On the question as to whether any offence had been committed: —*Held*, that a "street" is any way or road in a city having houses on both sides; and that in consequence this definition excluded the drain or ditch on either side of the roadway; that the drain was not part of the "street," and that the offence charged had not been committed.—VENKATARAMA CHETTI *v.* EMPEROR, I. L. R., 28 Mad. 17.

Stolen Property—

1. STOLEN PROPERTY — *Possession of.*] Where the accused was found in possession of stolen ornaments three days after the theft, he being distantly related to the thief, and he disposed of the thing in a way gravely suspicious, it was *held* that the evidence was not conclusive.—ASWINI KUMAR ROY *v.* THE EMPEROR, 10 C. W. N. 210.

Stolen Property (*contd.*)—

2. STOLEN PROPERTY—Consisting of a considerable quantity of cloth weighing about five maunds was discovered on search by the police in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father, son, and grandson. The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family. *Held* that, under the above circumstances, the conviction of the managing member of the family under s. 411 of the Indian Penal Code was a proper conviction. *Queen-Empress* v. *Sangam Lal* (I. L. R., 15 All. 129) referred to.—EMPEROR *v.* BUDH LAL, I. L. R., 29 All. 508.

3. STOLEN PROPERTY—Two persons, B, who was not a British subject, and R, who was, were committed to the Court of Session at Jhansi, it being alleged against them that they had committed a robbery in an adjoining Native State, and had brought the stolen property into British territory. *Held* that, though neither could be tried by the Sessions Judge of Jhansi for the robbery, B. because he was not a British subject, and R, because the certificate required by s. 188 of the Code of Criminial Procedure was wanting, yet both might be tried for the offence of retaining stolen property under s. 411 of the Penal Code. *King-Emperor* v. *Johri* (I. L. R., 23 All. 266) distinguished. *Queen-Empress* v. *Abdul Latif* (I. L. R., 10 Bom. 186) followed.—EMPEROR *v.* BALDEWA, I. L. R., 28 All. 372 : 3 A. L. J. 146.

Summary Trial—

SUMMARY TRIAL — *Jurisdiction — Facts determining jurisdiction to try summarily —Criminal Procedure Code (Act V. of 1898) s. 260—Distraint, legality of—Form of the distress warrant—Bengal Municipal Act (Bengal Act III. of 1884), s. 122.*] It is not the complaint alone, which determines the jurisdiction of the Magistrate to try a case summarily, but the complaint and the subsequent examination of the complainant taken together. Where it appeared from the complaint and the sworn examination of the complainant that the facts amounted to an offence under s. 186 of the Penal Code :—*Held*, that the Magistrate had jurisdiction to try the case summarily, *Bishu Shaik* v. *Saber Mollah*, I. L. R., 29 Cal. 409, referred to. Where the distress warrant authorized the distraint of the moveables of the

Summary Trial (*contd.*)—

defaulters, wherever found within the Municipality, or any other moveables found within the holding specified, it was *held* that the tax daroga was justified in attaching goods proved to belong to the defaulters, which were found within the municipal limits.—FANINDRA NATH CHATTERJEE *v.* EMPEROR, I. L. R., 36 Cal. 67.

Supreme Court, Calcutta—

SUPREME COURT, CALCUTTA—*Jurisdiction.*] Under the General jurisdiction of the Supreme Court at Calcutta, a person, though resident at Benares, was liable to its jurisdiction, if privy to, and co operating in, a misdemeanour committed within it. Where therefore a party resident at Benares was indicted with others before the Supreme Court for a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was held by the judicial committee that the offence, having been completed within the jurisdiction of the Supreme Court at Calcutta, that Court had rightly assumed jurisdiction over the parties privy to it, though from the slight nature of the evidence, they directed a new trial.—JANOKY *v.* KING 1 M. I. A. 67.

Superintendence, powers of, High Court—

SUPERINTENDENCE, POWERS OF, HIGH COURT.—*Criminal Proceedings, stay of, when civil suit on same facts pending.*] The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by lauching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses and such proceedings if launched, will be stayed by the High Court in the exercise of its powers of superintendence. *Eadara Viranna* v. *The Queen*, (I. L. R., 3 Mad. 400), distinguished ; *In re Devaji Valad Bhavani*, (I. L. R , 18 Bom. 581), distinguished ; and (*Raj Kumari Debi* v. *Bamasundari Debi*, (I L. R., 23 Cal. 610), distinguished. —ANNA AYYAR *v.* EMPEROR, 30 Mad. 226.

Surety Bond—

SURETY BOND—*Liability of Surety on forfeiture of bond by Principal— Recovery of amounts of bonds from both Principal and Surety—Criminal Procedure Code (Act V. of 1908), s. 514 and Sch. V., Form XI.*] Upon the forfeiture of a bond by a person to keep the peace for a term the surety is liable to pay the amount specified in his bond in addition to the penalty paid by the principal. *Emperor* v. *Nga Kaung*, U. B. R. 31 ; 2 Cr. L.

Surety Bond (*contd.*)—

J. Ind. 463, dissented from. The requiring a surety to such a bond is not to ensure the recovery of the object of amount of the bond from the principal, but to serve as an additional security for his keeping the peace. *Queen-Empress v. Rahim Bakhsh*, I. L. R., 20 All. 206, referred to.—SALIGRAM SINGH *v.* EMPEROR, I. L. R., 36 Cal. 562.

Surety for good behaviour—

SURETY FOR GOOD BEHAVIOUR—*Fitness of surety—Pecuniary qualification, but not power of control—Grounds of rejection—Criminal Procedure Code (Act V. of 1898), s. 122*] In determining the fitness of a surety under s. 122 of the Criminal Procedure Code, the first matter to be inquired into is his ability to pay the amount of the bond in case of default by the principal; but there may be other matters also to be considered as grounds of objection, which must be dealt with in each case as it arises. Where a surety is competent in a pecuniary sense, the fact that he is not in a position to exercise control over the person bound down, so as to ensure his good behaviour in future, is not a sufficient ground for his rejection. *Ram Pershad* v. *King-Emperor* 6. C. W. N. 593, *Adam Sheikh* v. *Emperor*, I. L. R., 35 Cal. 400 and *Jalil* v. *Emperor*, 13 C. W N. 80, referred to.—JAFAR ALI PANJALIA *v.* EMPEROR, I. L. R., 37 Cal. 446.

Surety, Fitness of—

SURETY, FITNESS OF—*Inability to control person bound down*] The test of the fitness of a surety is not whether he can supervise the person bound down, but whether he is a person of sufficient substance to warrant his being accepted. *Abinash Malakar* v. *Empress*, 4 C. W. N. 797, *Ram Pershad* v. *King-Emperor*, 6 C. W. N. 593, followed. *Queen-Empress* v *Toni*, 1895 All. W. N. 143 and *Queen-Empress* v. *Rahim Baksh*, I. L. R., 20 All. 206, dissented from—ADAM SHEIKH *v.* EMPEROR, I L. R., 35 Cal. 400.

Sword-stick—

SWORD-STICK—"*Arms*," *meaning of—License, necessity of—Indian Arms Act (XI. of 1878) ss. 4, 13 and 19 (e).*] A sword-stick is a "sword" within the meaning of the term in s. 4 of the Indian Arms Act. Neither the length, breadth or the form of the blade of a weapon, nor the handle, afford any certain test of its classification as 'arms." Whatever can be used as an instrument of attack or defence, for cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, falls within

Sword-stick (*contd.*)—

the purview of the Act.—EMPEROR *v.* SATISH CHANDRA ROY, I. L. R., 34 Cal. 749.

T.

Tax—

TAX—*Madras District Municipalities Act (Mad Act IV. of 1884), s. 63 (3)—Madras District Municipalities Amendment Act (III. of 1897), s. 49—"Lands used solely for agricultural purposes"—Liability to tax.*] By sub-section (3) of s. 63 of the Madras District Municipalities Act, 1884, as amended by the Madras District Municipalities Amendment Act, 1897, lands used "solely for agricultural purposes" are exempted from the enhanced rates of taxation that may be imposed in certain cases under that sub-section :—*Held*, that lands on which potatoes, grain, vegetables, &c, are grown, as well as pasture lands, are used "solely for agricultural purposes" within the meaning of the sub-section.—KING-EMPEROR *v.* ALEXANDER ALLAN, I. L. R., 25 Mad 627.

Theft—

1. THEFT—*Summary trial—Dispute as to possession of land—Bona-fide belief as to title—Cutting and carrying away crops sown by another—Facts constituting theft—Dishonest intention—Penal Code (Act XLV. of 1860), ss. 24, 379—Criminal Procedure Code (Act V. of 1898), ss 429, 439.*] An accused person alleged and claimed that certain paddy was grown upon his *jote*, and that he cut and removed it as a matter of right, and in an assertion of a *bona fide* claim to the land, it was admitted by the complainant. who also claimed the paddy and the land, that there had been a boundary dispute between his landlord and the landlord of the accused. The accused was convicted in a summary trial of the paddy. *Held per* PRINSEP, J : That, if the complainant's *barqadars* had grown the crops as found, and nevertheless the accused cut and carried them off, there could be no *bona fide* belief that he was entitled to do so to justify his action in regard to the complainant. With the fact found that possession was with the complainant by the growing by him of the crops cut by the accused, the accused was without justification in thus taking the law into his hands even if he was entitled to hold the lands, because he was not in actual possession of them His Lordship refused to interfere. *Per* STEVENTS, J. : The findings of the lower Court, taken as a whole, amounted to a finding that tne accused acted *mala fide*, and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could not be taken as showing that a *bona-fide*

Theft (*contd.*)—

dispute as to title existed between the complainant and himself. To constitute theft it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. In the present case the complainant had an apparent title as tenant of the land, together with long possession; and he had, on the strength of that apparent title and long possession, raised the crops which the accused removed. The application should be dismissed. *Queen-Empress* v. *Gangaram Santram* (I. L. R., 9 Bom. 135), referred to. *Per* STANLEY, J., *contra*.—That the evidence as well for the prosecution as for the defence conclusively established that there was a *bona-fide* dispute as to the title to the land upon which the paddy was sown. Once this was shown, the criminal charge failed. The fact, if it be the fact, that the paddy was sown by the complainant, would not give him the property in the crop, if it were sown on the land of the accused. If the land was the land of the accused, it was an act of trespass on the part of the complainant to sow it with paddy, and the complainant had no right to complain if the accused resented his act of aggression by cutting and removing the crop. A dishonest intent is a necessary ingredient in the offence of theft. No such intention has been found on the part of the accused, and the conviction and sentence should be set aside.—PANDITA *alias* RAHMATULLA PRAMANIK *v.* RAHIMULLA AKUNDO, I L. R., 27 Cal. 501.

2. THEFT—*Conviction—Appeal—Acquittal of theft—Conviction of offence of different character, Legality of—Criminal Procedure Code (Act V. of 1898), s. 423—Penal Code (Act XLV. of 1860), ss. 143, 379.*] The accused were convicted of theft: that was the only charge which they were called upon to answer. In appeal the District Magistrate held that no theft had been committed, but he convicted the accused of being members of an unlawful assembly. *Held* that on the trial the accused were called upon to answer only a charge of theft; they were never called upon to answer any other charge, and they, therefore, could not fairly be convicted on their appeal of an offence of an entirely different character. It is on the proceedings taken before the Magistrate that the facts constituting an offence for which a trial is held are made known to the accused, and the law is applied by the Magistrate to the facts established, so as to constitute the charge which the accused is called upon to answer. It therefore cannot be said that sufficient notice was given to the accused because mention of s. 147 of the Penal Code (rioting) together with theft was made in the final report of the police as the offences

Theft (*contd.*)—

considered to have been established; and that the accused must have been made acquainted with such report.—JATU SING *v.* MAHABIR SINGH, I. L. R., 27 Cal. 660.

3. THEFT—*Penal Code (Act XLV. of 1860), s. 379—Removal of fish from an ordinary irrigation tank—Charge of theft—Maintainability of charge.*] Fish in an ordinary irrigation tank are not in the possession of any person so as to be capable of being the subject of theft. Nor does the removal of such fish constitute any other offence. *Queen* v. *Revu Pothadu* (I. L. R., 5 Mad. 390), and *Bhagiram Dome* v. *Abar Dome* (I. L. R., 15 Cal. 388), referred to.—SUBBA REDDI *v.* MUNSHOOR ALI SAHEB, I. L. R., 24 Mad. 81.

4. THEFT—*Penal Code (Act XLV. of 1860), s. 215—Receiving gratification to help the owner to recover stolen property—S. 215 not intended to apply to the actual thief.*] S. 215 of the Indian Penal Code was not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence.—QUEEN-EMPRESS *v.* MUHAMMAD ALI, I. L. R., 23 All. 81.

5. THEFT—*Penal Code (Act XLV. of 1860), s. 380—Theft from a railway van—Property found in an adjoining van, in which four railway coolies were travelling—Evidence.*] On suspicion of theft certain articles from a running goods train, a van on the train, in which four railway coolies were travelling, was searched. The property missed was not found, but, hidden under a heap of clothing belonging to the four coolies, were discovered 10 *thans* of cloth, which on investigation were ascertained to have been abstracted from the next van. *Held* that none of the four coolies travelling in the van where the 10 *thans* of stolen cloth were found could be convicted of the theft of the cloth in the absence of evidence to connect one or more of them individually with the possession of the cloth.—KING EMPEROR *v.* ALI HUSAIN, I. L. R., 23 All. 306.

6. THEFT—*Disputed Ownership.*] The petitioner was convicted of theft of certain bamboos which he said he cut on his own patta land, but which the prosecution alleged he cut on Government poramboke land adjacent to his own. Prior to his conviction, disputes had arisen between the Revenue authorities and the petitioner regarding the ownership of the land. The petitioner contended that he *bona fide* be-

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lieved the bamboos to be his property at the time he cut and removed them. The Magistrate finding that the Revenue authorities had taken possession of the land at the time the bamboos were removed, convicted the petitioner: *Held* that the conviction was wrong. The questions to be considered were, (1) whether the bamboos did in fact belong to the petitioner or to Government; (2) whether, if they did not belong to the petitioner, he *bona fide* believed they did. It is the province of the Civil Courts to decide questions of ownership of land between Government and private parties, and if the Revenue authorities take summary possession of land as in the present case, they become mere trespassers, and there is nothing dishonest in the owner taking possession of his own property.—ALGARASWAMI TEVAN *v.* EMPEROR, I. L. R., 28 Mad. 304.

7. THEFT—*Feræ naturæ.*] "Chanks" (popularly included among shell-fish, but really large molluscs) are found buried in beds of sand, or in the sandy crevices of coral reefs in Palk's Bay, a large bay landlocked by British dominions for eight-ninths of its circumference, and containing numerous islands which form part of the districts to which they are adjacent on the shores of India and Ceylon. It was shown by evidence that this bay (as well as parts of the adjacent Gulf of Manaar) had been effectively occupied for centuries by the inhabitants of India and Ceylon, respectively; that the "chanks" found therein had for centuries been the monopoly of the rulers of the country, both in India and Ceylon, and that licenses to gather them had been granted by the sovereign; and that "chank royalty" was one of the heads of revenue on which permanent assesment of an adjacent zemindari was fixed in 1802. Petitioner, who had leased from the Rajah of Ramnad the "chank beds" five miles off the coast of his zemindari, charged the counter petitioners with having committed the offence of theft of "chanks" from these beds. On the defence being raised that "chanks" were fish and were *feræ naturæ*, and that those in question had been taken from beds in the open sea, and had therefore not been taken from the possession of the complainant, and could not be the subject of theft, *held* that the "chanks" in question were capable of being the subject of theft.—ANNAKUMARU PILLAI *v.* MUTHUPAYAL, I L. R, 27 Mad. 551.

8. THEFT—*Quarring and removing stones.*] Stones, when quarried and carried away, are "things severed from the earth" (within the meaning of section 378, explanation 1, of the Indian Penal Code), and are "moveable property" (within the meaning of section 22), and, as such, are capable of being the subject of theft. A person who quarries and carries away stones from land in the possession of another commits theft. — *Queen-Empress V. Kotayya* (I. L. R., 10 Mad. 255) dissented from.—VENKATAPPYYA SASTRI *v.* MADULA VENKANNA, I. L. R., 27 Mad. 531

9. THEFT—*Mischief— Running water—Cutting embankment of channel and diverting running water—Penal Code (Act XLV. of 1860) ss. 379, 430.*] Where the accused cut the embankment of a *pyne* and drew the water to their own lands and were convicted of theft and mischief under ss. 379 and 430 of the Penal Code:—*Held*, that running water not reduced into possession could not be the subject of theft. *Per* GRIDT, J. (WOODROFFE J *dubitante*, that the cutting of the embankment constituted an offence under s. 430 of the Penal Code. *Ferns v. O'Brien*, 11 Q. B. D. 21 distinguished. EMPEROR *v*, SHEIKH ARIF, I. L. R., 35 Cal. 437.

10. THEFT—*Criminal Breach of Trust—Moveable or Immoveable Property—Entrustment of land with standing Crops—Cutting and disposing of Crops—Penal Code (Act XLV. of 1860), ss. 379. 405.*] Where certain land on which there was a standing crop of paddy was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice to the factory people who would reap it:—*Held*. that by cutting the crops themselves and disposing of the same, the accused were guilty of theft if not of criminal breach of trust. *Jugdown Sinha* v. *Queen-Empress*, I L. R., 23 Cal. 372, and *Reg.* v. *Girdhar Dharmdas*, 6 Bom. H. C. 33, distinguished. *Queen-Empress* v. *Bhagu*, Ratanlal's Unrep. Cr. C. 928, followed.—DURGA TRWARI v. EMPEROR, I. L. R, 36 Cal. 758.

Thumb-Mark—

1. THUMB-MARK—*Thumb mark, evidentiary value of — Blurred impressions—Expert opinion, grounds of—Judge—Jury—Power of Judge to question the Jury—Criminal Procedure Code (Act V. of 1898) s. 303.*] Where certain thumb-impressions were blurred, and many of the characteristic marks, therefore, far from clear, thus rendering it difficult to trace the features enumerated by an expert as showing the identity of the impressions, and the Court could only find a distinct similarity in some respects, *e, g.*, pattern and central core:—*Held* that the Jury were not wrong in refusing to accept the opinion of the expert.

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Per GEIDT, *J.*—A Jury may decline to accept the opinion of an expert without the corroboration of their own intelligence as to the reasons which guided him to his conclusion with respect to the identity of the impressions. *Per* HENDERSON, *J.* It is only when it is necessary to ascertain what the verdict really is that s. 303 of the Criminal Procedure Code justifies the Judge in putting questions to the Jury. Where, therefore, on a charge under s. 82 (*c*) of the Registration Act (III. of 1877), the verdict was a plain and simple one of not guilty, the Judge was not empowered to ask the Jurors whether they found that the thumb-impression on the bond alleged to have been forged was that of the accused.—EMPEROR *v.* ABDUL HAMID, I. L. R., 32 Cal 759.

Thumb-impression—

THUMB-IMPRESSION—*Evidence — Taking of thumb impression out of Court without objection made—Admissibility of such impression in a subsequent trial for giving false evidence—Evidence Act* (*I. of 1872*), *s. 132, and Proviso—Penal Code* (*Act XLV of 1860*), *s. 193.*] Where a Magistrate, believing that the complainant had given false evidence in the course of a trial, by denying the fact of a previous conviction, had his thumb-impression taken out of Court, for the purpose of identification in a future prosecution under section 193 of the Penal Code, and there was nothing to show that the latter had objected to the taking of it:—*Held*, that the thumb-impression was admissible in a subsequent trial for giving false evidence, and that the proviso to s. 132 of the Evidence Act was not applicable, inasmuch as (i) the taking of such an impression was not equivalent to asking a question and receiving an answer, (ii) no objection was made to the taking of it and (iii) it was not taken in the course of a trial. *Queen* v. *Gopal Doss*, I. L. R., 3 Mad. 271, and *Moher Sheikh* v. *Queen-Empress*, I. L. R., 21 Cal. 392, referred to.—TUNOO MIA *v.* EMPEROR, I. L. R., 39 CAL. 348.

Tolls—

TOLLS — *Dispute concerning the right to collect market tolls and not the possession of the market land — Possession under ekrarnama as agent of co-sharer for collection of tolls and division of profits—Jurisdiction of Magistrate—Criminal Procedure Code* (*Act V. of 1898*), *s. 145.*] Section 145 of the Criminal Procedure Code does not apply to a dispute relating to the rights of co-sharers to collect tolls in proportion to their respective shares in a *hat* and not to the possession of the *hat* itself. Where one of two co-sharers was entitled under an *ekrarnama* to collect the tolls of the

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whole market and to divide the profits with the other co-sharer at the end of the year, and the lessee of the latter attempted to collect his lessor's share independently :—*Held*, that the Magistrate had no jurisdiction to take proceedings under section 145 in such a case. A Magistrate cannot under the section determine the method by which the possession of the parties is to be exercised or the agency by which the party in possession is to collect the profits of land. *Nritta Gopal Singh* v. *Chandi Charan Singh*, 10 C. W. N. 1088, followed. *Sri Mohan Thakur* v. *Narsing Mohan Thakur*, I. L. R., 27 Cal. 259, distinguished. *Tarujan Bibee* v. *Asamuddi Bepari*, 4 C. W. N. 426, referred to.—AKALOO CHANDRA DAS *v.* MOHESH LAL, I. L. R., 36 Cal. 986.

Trade-mark—

1. TRADE-MARK — *Trade-description — Title of a book—Unauthorized publication —Indian Penal Code* (*Act XLV. of 1860*), *ss. 478, 482—Merchandise Marks Act* (*IV. of 1889*), *ss. 4, 6.*] The complainant, as a descendant of one Shri Chandu, had for many years prepared calendars bearing the the name of "Shri Candu Panchang" at Jodhpur, and had sent each year a copy of such calendar to publishers in different parts of India, and from the copy so furnished these publishers issued and published calendars bearing the name "Shri Chandu Panchang," thus denoting them as calendars prepared in Jodhpur by the descendants of Chandu. The defendant, a publisher in Bombay, prepared a calendar and put the name "Shri Chandu Panchang" on the outside, although the calendar was not prepared by the descendants of Shri Chandu. The complainant thereupon filed an information against the defendant under s. 482 of the Indian Penal Code (Act XLV. of 1860), and s. 6 of the Merchandise Marks Act (IV. of 1889). *Held*, (1) that the defendant had committed no offence under s. 482 of the Indian Penal Code (Act XLV. of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade-mark" given in s. 478 of the Code; (2) That the defendant's act did not fall under s. 6 of the Merchandise Marks Act (IV. of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorised.—RADHA KRISHNA JOSHI *v.* KISSONLAL SHRIDHAR, I. L. R., 26 Bom. 289.

2. TRADE-MARK—*User of, and property in — Proof of—Importation and sale of articles with particular marks impressed*

Trade-mark (*contd.*)—

upon them — Succession by one Bank to business of another — Merchandise Marks Act (IV. of 1889), s. 3—Penal Code (Act XLV. of 1860), ss. 485, 486.] A mark, to be a trade-mark, must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mere fact that a Bank imported and sold gold bars with a particular mark impressed upon them, a mark which was not originally theirs, but belonged to a Bank that had ceased to exist, and where there was no proof of any transfer or assignment of the mark, or that the new Bank succeeded the other in the sense either that it was a continuation of that Bank under another name, or that it succeeded to the business or acquired the good will of that Bank, was held not to be sufficient to establish that the mark was the trade mark of the new Bank.—ANOOKOOL CHUNDER NUNDY *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 776.

3. TRADE-MARK — *False or counterfeit trade-mark, use of—Penal Code (Act XLV. of 1860), ss. 482, 486—Merchandise Marks Act (IV. of 1889), s. 6.*] *K*, a merchant of Calcutta, ordered certain goods from Europe, but refused to take delivery of the consignment on its arrival in Calcutta. The goods were thereupon sold in the market with the labels of the firm of *K* attached thereto, and were purchased by *M*, a dealer in piece-goods. *M* sold the goods without removing the labels of *K*, and was convicted under s. 486 of the Penal Code for selling the goods with a counterfeit trade-mark:—*Held*, that no offence was committed by *M* either under s. 482 or s. 486 of the Penal Code.—MATILAL PREMSUK *v.* KANHAI LAL DASS, I. L. R., 32 Cal. 969.

4. TRADE MARK—*Selling goods marked with a counterfeit trade mark—ss. 482, 486 of the Indian Penal Code as amended by the Merchandise Marks Act (Act IV. of 1889 as amended by Act IX. of 1891), ss. 6 and 7— Applying a false trade description to goods.*] *Held*, a person may to some extent appropriate to his own use a name suggested by his trade, without infringing the law relating to trade marks or trade descriptions. *Held* also, that the appellants, who sold fish-hooks in boxes similar to the respondents with a design of one fish with its head and tail turned up, cannot be held to have infringed the trade-mark of the respondents, who also sold fish-hooks with the design of two fish crossed, with their heads and tails turned up. *Held*, where the public has chosen a name r its own use such as "mash marka" (fish

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mark), that fact cannot be held to prevent other persons from applying a mark to fish-hooks, which may be generally known by the same term.—EMPEROR *v.* BAKAULLAH MALLIK, I. L. R. 31 Cal. 411.

5. TRADE-MARK—*User, bonâ fide dispute as to right of—Criminal proceedings, propriety of—Penal Code (Act XLV. of 1860) s. 486.*] In a prosecution for counterfeiting a trade-mark, if the Magistrate is of opinion there is a *bonâ fide* dispute between the parties as to the right of user of such mark, he should not deal with the matter criminally, but leave it to the complainant to establish the rignt claimed in a Civil Court. *Emperor* v. *Bakaullah Mallik* (I. L. R. 31 Cal. 411) referred to. — DOWLAT RAM *v.* EMPEROR, I. L. R. 32 Cal. 431.

Transfer—

1. TRANSFER— *Magistrates — Succession of Magistrates—Transfer of case from one Magistrate to another—De novo trial—Criminal Procedure Code (Act V. of 1898) ss. 350 and 528—Practice.*] Section 350 of the Criminal Procedure Code is not limited to cases in which Magistrates succeed each other in their offices, but applies also to all cases transferred from the file of one Magistrate to that of another under section 528 of the Code. *Deputy Legal Remembrancer* v. *Upendra Kumar Ghose*, 12 C. W. N. 140, commented on. *Purmessur Singh* v. *Sooroop Audikaree*, 13 W. R. Cr. 40; *Kopil Nath Sahi* v. *Koneeram*, 14 W. R. Cr. 3, referred to. *In re Raghoo Parirah*, 19 W. R. Cr. 28, *Damri Thakur* v. *Bhowani Sahoo*, I. L. R., 23 Cal. 194, *Queen Empress* v. *Bashir Khan*, I. L. R., 14 All. 346, distinguished. *Queen* v. *Hurnath Guho Thakurta*, 24 W. R. Cr. 52, *Queen-Empress* v. *Angnu*, (1889) All. W. N. 130, not followed.—MOHESH CHANDRA SAHA *v.* EMPEROR, I L. R., 35 Cal. 457.

2. TRANSFER—*Security to keep the peace —Jurisdiction of Magistrates—Criminal Procedure Code (Act V. of 1898), ss. 107, 192 —Proceedings, initiation of.*] A District Magistrate instituting proceedings under s. 107 (2) of the Criminal Procedure Code has power to transfer the inquiry to any subordinate Magistrate competent to inquire into the same. The object of s. 107 of the Criminal Procedure Code is to restrict the initiation only of proceedings against persons residing beyond the local limits of the jurisdiction of District Magistrates, and not to restrict their power to transfer such proceedings, after initiation, to a subordinate Magistrate. *Shama* v. *Lechhu Shekh*, I. L. R., 23 Cal. 300. *Raghu Singh* v. *Abdul Wahab*, I. L. R., 23 Cal. 442, distinguished. *Dinendro Nath Shanial, in re,*

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I. L. R., 8 Cal. 851. *Satish Chandra Panday* v. *Rajendra Narain Bagchi*, I. L. R., 22 Cal. 898, referred to. *King Emperor* v. *Munna*, I. L. R, 24 All. 151 followed. The proceedings under s. 107 of the Code are intended to be precautionary and not punitive.—SURJYA KANTA ROY CHOWDHRY *v.* EMPEROR, I. L. R. 31 Cal. 350.

Transfer of Case—

1. TRANSFER OF CASE—*Criminal Procedure Code—(Act V. of 1898), s. 528—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Regulation IV. of 1821.*] The jurisdiction which a District or Sub-Divisional Magistrate has, under s. 528 of the Code of Criminal Procedure, to transfer a criminal case from the file of a Village Magistrate is limited to the cases (namely those relating to petty thefts) which a village Magistrate is empowered by regulation IV. of 1821 to try and punish.—SEVAKOLANDAI *v.* AMMAYAN, I. L. R., 26 Mad. 394.

2. TRANSFER OF CASE—*Jurisdiction—Transfer of criminal case—to Subordinate Magistrate—District Magistrate, power of, to pass order relating to case not on his own file—Criminal Procedure Code (Act V. of 1898) ss. 190, 192, 435.*] When a case is once made over for disposal to a Subordinate Magistrate by the District Magistrate, the latter is not competent to pass any order relating to it other than an order such as might be made by him under Chap. XXXII. of the Code of Criminal Procedure. *Moul Singh* v. *Mahabir Singh*, 4 C. W. N. 242 and *Golapdy Sheikh* v. *Queen-Empress*, (I. L. R., 27 Cal. 979) referred to. —RADHABULLAV ROY *v.* BENODE BEHARI CHATTERJEE I. L. R., 30 Cal. 449.

3. TRANSFER OF CASE—*Withdrawal of case by District Magistrate—Inquiry or trial—Code of Criminal Procedure (Act V. of 1898), ss. 253, 528.*] Where a case which was being tried by a Deputy Magistrate, who was about to frame charges against the accused persons, was withdrawn by the the District Magistrate to his own file and dismissed under s. 253 of the Criminal Procedure Code, on the ground that the accused, who were policemen, were protected by their warrants :—*Held*, that the case ought to have been left with the Deputy Magistrate to be disposed of, and that it was for him to determine whether the offence charged was made out or whether the police were protected by their warrants. —GOPINATH PATNAIK *v.* NARAIN DASS BANERJEE, I. L. R., 30 Cal. 693.

Transfer of Case (*contd.*)—

4. TRANSFER OF CASE—*Criminal Procedure Code (Act V. of 1898), s. 526—Reasonable apprehension in the mind of the accused—Incidents and circumstances calculated to create apprehnsion.*] A Magistrate is bound to postpone the hearing of a case for the purpose of enabling a party to apply to a higher court for a transfer and his refusal to do so renders the subsequent proceedings voidable, if not void. *Queen-Empress* v. *Gayitri Prosunno Ghosal* (I. L. R., 15 Cal. 455), *Surot Lal Chowdry* v. *Emperor*, (I. L. R., 29 Cal. 211) and *Kishori Gir* v. *Ram Narayan Gir* (8 C. W. N. 77), followed. If the words used by and the actions of a judicial officer, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the mind of the accused an apprehension that he may not have an impartial trial, the case should be transferred to some other Judge for trial. *Dhone Kristo* v. *King Emperor* (I. L. R., 31 Cal. 715) and *Joharuddin* v. *Emperor* (8 C. W. N. 910) referred to. Confidence in the administration of justice is an essential element in good government and a reasonable apprehension of failure of justice in the mind of the accused should be taken into consideration on an application for transfer. *Narain Chundra Banerjee* v. *The Howrah Municipality* (10 C. W. N. 44) explained. *Held*, *per* HOLMWOOD J. that the case should be transferred in view of the technical objection that may be taken to the validity of the Magistrate's final decision, owing to his having refused time to apply for a transfer. The views of BRET, J. as expressed in *Narain Chundra Banerjee* v. *The Howrah Municipality*, (10 C. W. N. 441) concurred with.—KALI CHARAN GHOSE *v.* EMPEROR, I. L. R., 33 Cal. 1183; 10 C. W. N. 793.

5. TRANSFER OF CASE—*Criminal Procedure Code, ss. 528, 537—Reasons for transfer not recorded, the transfer being obligatory—Police Officer against whom a complaint was made called upon to submit an explanation.*] A complaint was made in the Court of a Deputy Magistrate accusing a Sub-Inspector of Police of offences under ss. 323, 384 of the Penal Code. The Deputy Magistrate brought the complaint to the notice of the District Magistrate, who without recording his reasons for so doing, but in obedience to an order of Government, transferred the case to his own file. The District Magistrate also called upon the officer accused to report as to any reason which he knew for the complaint having been made against him. This report was placed on the record, and was used, as the Magistrate stated in his order, to supply grounds for cross-examining the witnesses produced by the complainant,

Transfer of Case (*contd.*)—

Held that omission on the part of the Magistrate to record his reasons for transferring the case was not under the circumstances more than an irregularity, and that his action in calling for a report from the Sub-Inspector and the use made of that report were not improper. *Baidya Nath Singh* v. *Muspratt* (I. L. R., 14 Cal. 141) dissented from. *Held* also, that where a District Magistrate transfers a case from the file of a Subordinate Magistrate to his own, it is not necessary that he should issue notice to the complainant before doing so. — DUKHI KEWAT, IN THE MATTER OF THE PETITION OF—, I. L. R., 28 All. 421.

6. TRANSFER OF CASE—*Criminal Procedure Code (Act V. of 1898), ss. 107 (2), 192 — Security for keeping the peace—Transfer—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.*] *Held*, that it was competent to a District Magistrate who had initiated proceedings under section 107 (2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction to transfer such proceedings at a later stage to a Magistrate subordinate to himself, though such Magistrate was not competent to initiate such proceedings.—KING-EMPEROR *v.* MUNNA, I. L. R., 24 All. 151.

7. TRANSFER OF CASE—*Criminal Procedure Code (Act V. of 1898), s. 528—Transfer of case at request of Magistrate—Notice.*] An order for the transfer of a case, made at the request of the Magistrate on whose file the case stands, and not on the application of a party, is an exception to the general rule that an order for transfer should not be made under s. 528 of the Code of Criminal Procedure without notice to the other side.—QUEEN-EMPRESS *v.* KUPPUMUTHU PILLAI, I. L. R., 24 Mad. 317.

8. TRANSFER OF CASE—*High Court, power of, to transfer case under s. 145 of the Code of Criminal Procedure—Bias, reasonable apprehension of—Witnesses, convenience to—Meaning of "case" and "criminal case"—Specific Relief Act (I. of 1877), s. 9—Code of Criminal Procedure (Act V. of 1898), ss. 4, 6, 107, 110, 145, 178, 192, 340, 342, 435, 437, 439, 526, 527, 528, 556—Charter Act (24 and 25 Vict.), c. 104, 15—Letters Patent, s. 29.*] *Held* (*per* GHOSE, J.) an investigation in a case under s. 145 of the Criminal Procedure Code is an inquiry within the meaning of cl. (*a*) of s. 526 of that Code. A Court of a Magistrate taking cognizance of a case under s. 145 is a Criminal Court within the meaning of the Criminal Procedure Code. The expression "criminal case" in s. 526 may be understood as simply distinguished from a civil case, being a case over which a Criminal Court has jurisdiction. It is doubtful whether under s. 526 the Legislature meant to confer on the High Court the power of making a transfer in cases other than those in which a person is charged with an offence. The High Court may, however, under s. 15 of the Charter Act, direct the transfer of a case under s. 145 of the Criminal Procedure Code, which a Magistrate has taken cognizance of. Next to the importance of deciding a case fairly and impartially is the importance of conducting oneself in such a manner as to inspire in the minds of the parties a confidence that nothing but absolute justice would be done. If, therefore, by reason of the words or conduct of a Magistrate or Judge, before whom a case is pending, any party reasonably apprehends that there is a bias against him in the mind of the officer concerned, it would be expedient for the ends of justice to transfer the case from his files, to that of some other officer competent to try it, though there may not be any actual bias. *Dupeyron* v. *Driver*, (I. L. R., 23 Cal. 495) and *The Legal Remembrancer* v. *Bhairab Chandra Chackerbutty* (I. L. R., 25 Cal. 727) referred to. *Held per* TAYLOR, J.—The phrases "case" and "criminal case" in the Criminal Procedure Code are not co-extensive and are not used indiscriminately or interchangeably. The phrase "criminal case" is intended to be used in a limited sense and not to apply to every case cognizable by a Criminal Court. It is doubtful whether the High Court has power under s. 526 to transfer cases, which do not relate to matters which may strictly be described as criminal as relating to a crime or offence under the law. The power, however, exists under s 29 of the Letters Patent, wherein the phrase "criminal case" appears to be used without the distinction which apparently exists in the Criminal Procedure Code in respect of cases tried by a Criminal Court as opposed to civil cases.—LOLIT MOHAN MOITRA *v.* SURJA KANTA ACHARJEE, I R. R., 28 Cal. 709.

9. TRANSFER OF CASE—*Grounds for transfer—Reasonable apprehension in the mind of the accused of Magistrate being biased—Suit by servant of state under Court of Wards, the District Magistrate as Collector being Manager—Code of Criminal Procedure (Act V. of 1898) s 526.*] Where the apprehension in the mind of the accused that he may not have a fair and impartial trial is of a reasonable character, then notwithstanding that there may be no real bias in the matter, the fact of incidents having

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taken place calculated to raise such reasonable apprehension ought to be a ground for allowing a transfer. *In the Matter of the Petition of J. Wilson* (I. L. R., 18 Cal. 247) and *Dupeyron* v. *Driver* (I. L. R., 23 Cal. 495) referred to. The mere fact that the Magistrate of the District is in his capacity as Collector concerned in the management of an estate held by the Court of Wards is no ground for asking for a transfer from the district of a case brought by a servant of the estate and pending before a Subordinate Magistrate in the district.—BAKTU SINGH *v.* KALI PRASAD, I. L. R., 28 Cal. 297.

10. TRANSFER OF CASE—*Grounds of Transfer—Opinion arrived at in another but similar case on other evidence—Bias—Criminal Procedure Code (Act V. of 1898), s. 526.*] The doctrine that a reasonable apprehension in the mind of an accused that he will not have a fair trial is a sufficient ground for transfer is sound, but in applying it regard must be had to the circumstances of each case. The mere fact that in another case, on other evidence, the Judge has come to a particular conclusion is not in itseif a sufficient ground for transfer. *Asimáddi* v. *Govinda Baidya* (1. C. W. N, 426) referred to.—RAJANI KANTA DUTT *v.* EMPEROR, I L R., 36 Cal. 904.

Trespass—

1. TRESPASS—*Penal Code (Act XLV. of 1860), ss. 441, 448—Criminal trespass—House trespass—Entry into house—Intent to annoy.*] The accused No. 1, who held a decree against a certain judgment-debtor, went with his son, accused No. 2, and a Civil Court bailiff to execute a warrant. Finding the door of the judgment-debtor's house shut, they entered his compound by passing through the complainant's house without his consent and notwithstanding his protest. *Held* that the accused's act amounted to criminal trespass, for when they trespassed on the complainant's house notwithstanding his protest, they must, as reasonable men, have known that they would annoy him. There is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain is not known to him to be so; but it must be presumed that when a man voluntarily does an act, knowing at the time that in the natural course of events a certain result will follow, he intends to bring about that result. *Queen* v. *Hicklin* (1868, 3 Q. B. 375), *Queen* v. *Martin* (1881, 8 Q. B. D. 58), *Reg.* v. *Lobett* (1839, 9 C & P. 466) *Freeman* v. *Pope* (1870, 5 Ch. 538), *Exparte Mercer, in re, Wise,* (1886, 17 Q. B. D. 290) referred to.—EMPEROR *v.* LAKSHMAN RAGHUNATH, I. L. R., 26 Bom. 558.

Trespass (*contd.*)—

2. TRESPASS—*Bonâ fides—Search for arms by Magistrate, whether executive or judicial act—Protection of Judicial Officers Act (XVIII. of 1850), s. 1—Statutory powers of Executive Officers, how to be exercised—Indian Arms Act (XI. of 1878), s. 25—Provision "having first recorded grounds of his belief," whether mandatory or directory—Criminal Procedure Code (Act V. of 1898) ss. 94, 96, 105, 106, 165—Search-warrant—Magistrate as "Court"—Search by police officer—Police Act (V. of 1861) s. 4—Powers of District Magistrate—Letters Patent of 1865, s. 20—Extraordinary Original Civil Jurisdiction of High Court.*] For some time previous to the 27th April 1907, there had been a considerable tension of feeling between the Hindus and Mahomedans at Jamalpur, in the District of Mymensingh. On the 27th April a Mahomedan was shot by a Hindu, and a serious conflict was narrowly averted by the Sub-divisional Officer and the District Superintendent of Police. On the arrival of the District Magistrate of Jamalpur, on the morning of the 28th April, he received reports from the two Officers of the occurrences of the 27th April, and he was also informed that the police had reason to believe that fire arms were stored in certain cutcheries belonging to Hindu zemindars. In consequence, the District Magistrate accompanied by the District Superintendent of Police proceeded to search the cutcheries. Under the orders of the District Magistrate, the cutchery of the respondent was forcibly entered, boxes forced open and search made. On an action instituted against the District Magistrate for trespass, it was found as a fact that he had acted with perfect *bonâ fides*:—*Held* (BRETT, J. dissenting), that according to the principles of equity, justice and good conscience, the search constituted an actionable trespass unless warranted by some Statute, and in the circumstances of the case, the search was warranted by no Statute. When Executive Officers are invested with Statutory powers of a special and drastic nature, before exercising those powers, they must strictly comply with the provisions of the Act which created them. The search being a general search for arms, was not warranted by section 25 of the Arms Act of 1878, which required that before making the search, the Magistrate should first record the grounds of his belief, in terms of the section which was not done. The words "having first recorded the grounds of his belief" in section 25 are mandatory. The search was not warranted by section 105 of the Criminal Procedure Code, as, in the circumstances of the case, the Magistrate was not acting as a "Court." The search was not warranted

Trespass (*contd.*)—

by section 165 of the Criminal Procedure Code: that section does not apply to a Magistrate. *Semble*: a general search for arms would be governed rather by the provisions of the Arms Act, than by the provisions of the Code of Criminal Procedure. The search must be taken to have been conducted by the Magistrate in his *executive* and not in his *judicial* capacity, and hence he was not protected by Act XVIII. of 1850. *Per* HARINGTON & BRETT JJ.. The issue of a search-warrant by a competent Magistrate is a judicial act, *Hope* v. *Evered*, L. R 17 Q. B. D. 338. *Mahomed Jackariah & Co*, v. *Ahmed Mahomed*, I. L. R., 15 Cal. 109, and *In re Lakhmidas Naranji*, 5 Bom. L. R. 980, referred to. CLARKE *v.* BROJENDRA KISHORE ROY CAOWDHRY, I. L. R., 36 Cal. 433.

3 TRESPASS—*Right of Magistrate to order search for Arms—Criminal Procedure Code (Act V. of 1898), ss. 36, 94, 96, 105, Schedule III. (8)—Jurisdiction to issue search warrant—Arms Act (XI. of 1878), s. 25—Provision as to recording grounds for belief, in s. 25, whether mandatory or directory—Protection of Judicial Officers—Directing search where offence has been committed is judicial action—Charge of want of bona fides and malice reprobated.*] For some time prior to 27th April 1907, much ill-feeling existed in and about Jamalpur, a sub-division of Mymensing, between the Hindu and Mahomedan communities and much excitement and resentment had been aroused on account of the action of the Hindus in attempting some days before that date to enforce a boycott of *bideshi* or foreign goods On 27th April, at night, a Mahomedan was wounded by a revolver shot fired by one of a party of Hindus, dressed as Mahomedans, who after the occurrence took refuge in some cutcherries belonging to the leading zemindars of the neighbourhood who were active sympathisers with the action of the Hindus. A crowd of Mahomedans at once collected, and proceeded to the cutcherries, but were prevented from attacking them by the District Superintendent of Police, and the Sub-divisional Officer, who, hearing of what had occurred, proceeded to the cutcherries, and restrained the mob, thereby averting a serious riot. A large number of Hindus, some of them with arms, had collected in a temple close by, and having bolted and barred the doors refused admittance which was demanded by the District Superintendent of Police and the Sub-divisional Officer. Shots were fired from inside the temple and a man in the crowd outside was wounded. The District Magistrate was then sent for and on his arrival on

Trespass (*contd.*)—

the morning of 28th April, he decided, in consultation with the District Superintendent of Police and the Sub-divisional Officer, that it was necessary to search the cutcherries to obtain possession of the arms used on the 27th, and others which it was reported to them were concealed there; and also for the purpose of, and in connection with, the investigation of the offences committed. The cutcherries were found locked, and as no officer or servant of the zemindars could be found, they were broken open under the District Magistrate's orders and instructions, and a search was made therein by the District Superintendent of Police and the men acting under his orders. No arms of any kind were found. In a suit for trespass against the District Magistrate, instituted by one of the zemindars whose cutcherry had been searched:—*Held* (reversing the decision of the first Court and of the majority of the Appellate Court, and upholding the decision of BRETT, J), that the search was warranted by the Code of Criminal Procedure (Act V. of 1898). A serious offence had been committed against the public tranquility into which it was the duty of the District Magistrate to enquire, and by virtue of his superior rank he was, at Jamalpur, the proper person to conduct the enquiry. By section 36, Schedule III.,, and section 96 of the Code the power of issuing a search-warrant was among his "ordinary powers," and therefore under section 105 he had power to direct a search to be made in his presence if he thought it advisable to do so. That being so, it was unnecessary to decide on the other defences set up but, *semble*, (agreeing with the majority of the Court of Appeal) that the District Magistrate not having complied with the preliminary condition prescribed by section 25 of the Arms Act (XI. of 1878) could not defend his action under that Statute. Also (agreeing with BRETT, J.) that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code, was acting in the discharge of his judicial functions and, had it been necessary, might have appealed for protection to Act XVIII. of 1850. The charge of personal misconduct advanced and reiterated without any shadow of proof deserved the severest reprobation.—CLARKE *v.* BRAJENDRA KISHORE ROY CHOWDHURY, I. L. R., 39 Cal. 953.

Trial—

TRIAL — *Practice — Criminal Procedure Code (Act V. of 1898), s. 350 — Sessions Judge — Magistrate — Evidence recorded partly by another Judge—Consent of the prisoner—Jurisdiction.*] Under the Code of Criminal Procedure a Sessions Judge is

Trial (*contd.*)—

not authorised to try a case partly on evidence not recorded by himself, and he cannot do so although the prisoner has given his consent to such a trial. Section 350 of the Criminal Procedure Code applies solely to Magistrates.—KING-EMPEROR *v.* SAKHARAM PANDURANG, I. L. R., 26 Bom. 50.

Trial by Jury—

TRIAL BY JURY — *Evidence — Previous statement, admissibility of—Contradictory statements—Depositions before the committing Magistrate—Criminal Procedure Code (Act V. of 1898), s. 288—Practice.*] In a trial before a Court of Sessions, counsel for the prisoner is not entitled to refer to the depositions given before the committing Magistrate for the purpose of contradicting the witnesses before the Sessions Court, without drawing their attention to the alleged contradictions in their previous depositions and giving them an opportunity of explaining the same. *Empress* v. *Haran Chunder Mitter*, 6 C. L. R., 390, overruled.—EMPEROR *v.* ZAWAR RAHMAN, I. L. R., 31 Cal. 142.

U.

1. UNITED PROVINCES MUNICIPALITIES ACT, s. 147—*Municipal Board—Jurisdiction—Prosecution in respect of matter concerning which a civil suit was pending.*] The plaintiff to a suit against a Municipal Board was permitted by the court to erect certain structures as specified in the decree of the court. Subsequently a dispute arose as to whether the structures which the plaintiff had erected were within or in excess of the powers given to him by the decree, and the Court decided, and the Board did not contest its decision, that the plaintiff had exceeded his rights under the decree, and that some portion of the said structures must be demolished. The Board meanwhile took action against the plaintiff under s. 147 of the United Provinces Municipalities Act, 1900. *Held* that it was not open to the Board to prosecute the plaintiff in respect of the structures, pending the decision of the Civil Court and to continue the prosecution after its decision.—EMPEROR *v.* BALDEO PRASAD, I. L. R., 32 All. 620.

Unlawful Assembly—

1. UNLAWFUL ASSEMBLY—*Penal Code (Act XLV. of 1860), s. 144—Evidence of common object.*] Two persons were charged with being members of an unlawful assembly armed with deadly weapons for the purpose of committing dacoity. The facts proved were that a crowd of about 100 persons, including the accused, had assembled together, armed with bill-hooks

Unlawful Assembly (*contd.*)—

and sticks; and that the crowd had dispersed at once on seeing the police. On these facts the Magistrate assumed that the intention of the members of the crowd was to use criminal force, and, having regard to the weapons with which they were armed, he convicted the accused under s. 144 of the Indian Penal Code. *Held* that the prosecution had failed to show that the common object of the crowd was such as would constitute it an unlawful assembly as defined by s. 141 of the Indian Penal Code, and that the accused were entitled to be acquitted.—QUEEN-EMPRESS *v.* PEELIMUTHU TEVAN, I. L. R., 24 Mad. 124.

2. UNLAWFUL ASSEMBLY—*Penal Code (Act XLV. of 1860), s. 143—Defence by accused persons of property in their possession.*] Paddy belonging to a society, to which the first accused belonged, was stored in a granary in a street. It was found as a fact that this paddy had been in the possession of the first accused for some time prior to 5th November 1899, and was in his possession on that date. Complainant, on 5th November 1899, attempted, as treasurer of the society, to forcibly take possession of the paddy with his servants, whereupon all the accused resisted him, and maintained the possession of the first accused, some blows being struck. On a charge being preferred against the accused for rioting:—*Held*, that no offence had been committed.—KING-EMPEROR *v.* AYYA ANNASAMY AIYAR, I. L. R., 25 Mad. 624.

3. UNLAWFUL ASSEMBLY—*Hiring and harbouring persons hired for an unlawful assembly, ingredients of offences of—Proof of unlawful assembly—Penal Code (Act XLV. of 1860) ss. 141, 150, and 157.*] S. 150 of the Penal Code refers to a particular unlawful assembly. Where, therefore, it is found that any person has hired or engaged any other person to join or become a member of a particular unlawful assembly, he is liable for any offence committed by any member of that unlawful assembly in the same way as if he had been a member of such unlawful assembly or himself had committed such offence. S. 157 of the Penal Code is of wider application. It provides for an occurrence that may happen and makes the harbouring, receiving or assembling of persons who are likely to be engaged in any unlawful assembly an offence. There, again, the law contemplates the imminence of an unlawful assembly, and the proof of facts which in law would go to constitute an unlawful assembly.

Unlawful Assembly (*contd.*)—

Therefore where a Magistrate only found that "what the accused has been doing is collecting and harbouring men for the purpose of committing a riot should he find it his interest to do so," and there was no finding that there had been any unlawful assembly, composed of the persons said to have been hired by the accused and in the course of which some offence had been committed for which the accused would have been responsible equally with those who were members of that unlawful assembly, nor that an unlawful assembly made up of the elements provided for by s. 141 of the Penal Code was in the contemplation of the accused:—*Held*, that the accused could not be convicted of having committed offences under ss. 150 and 157 of the Penal Code.—RAM LOCHAN SARCAR *v.* QUEEN-EMPRESS, I. L. R., 29 Cal. 214.

4. UNLAWFUL ASSEMBLY — *Penal Code ss. 34, 141, 142, 147, 149—Riot—Common object—Conduct—Presumption — Criminal Procedure Code (Act V. of 1898), ss. 233, 235, 239—Riotous mob—Same transaction—Joint trial—Evidence of good character—Political offence—Positive evidence—Negative evidence—Weight of evidence.*] In the absence of evidence or reasons to the contrary it is permissible to presume that the common object of a riotous mob is that indicated by their conduct, and that they entertained from the beginning the common object indicated by their conduct throughout their proceedings. The proceedings of a riotous mob, which from first to last showed a continuity of purpose and of action and were united by a close proximity in time, form one transaction within the meaning of ss. 235 and 239, Criminal Procedure Code, so as to render all the rioters liable to be tried at the same trial for the acts done by each of them. *Per* BENSON, *J.*—The presumption from the evidence of good character, education and good family connection of an accused person cannot be pressed too far in the case of offences originating in extreme political feeling. The negative evidence of the witnesses, who say that they did not see the accused doing any thing, cannot outweigh the positive evidence of those who prove the acts done by him. *Per* SANKARAN NAIR, *J.*—The essence of the offence defined in s. 141, Indian Penal Code, is the common unlawful purpose and an accused person cannot be convicted if the common object proved is different from the common object in the charge or for which he has been tried. Persons to be tried jointly for an offence under s. 142, Indian Penal Code, must have been associated from the

Unlawful Assembly (*contd.*)—

first in the series of acts which from the same transaction. (*Emperor* v. *Jethal*, 29 Bom. 449; *Hiralal* v. *Emperor*, 31 C. 1053 followed.)—*In re* LOGANATH AIYAR, 6 M. L. T. 17.

5. UNLAWFUL ASSEMBLY — *Rioting — Common Object.*] Where the common object stated in the charge against the petitioners was to take possession of some property by criminal force, or to enforce a right or supposed right on it, and the Appellate Court found that the opposite party had been trying to encroach upon the land decreed to the petitioners, and that the occurrence was the result of the complication, which the opposite party was trying to introduce by stealthy wrongful acts, *held* by the majority of the Court that the common object alleged in the charge had not been made out, and that the accused were entitled to be acquitted. *Rahimuddi* v. *Asgar Ali* (I. L. R., 27 Cal. 990) followed.—PORESH NATH SIRKAR *v.* EMPEROR, I. L. R., 33 Cal. 295.

Unsoundness of Mind—

1. UNSOUNDNESS OF MIND — *Murder.*] Where the accused cut his wife's throat without any rational motive, and was captured at once without any attempt on his part to escape or offer resistance, and the evidence showed that, before the commission of the offence, he suffered from a failure of reasoning powers, and also that he entertained delusions as to dangers which threatened his wife, *held* that the facts proved unsoundness of mind which prevented the accused from knowing the nature of his act, and that s. 84 of the Penal Code applied.—DIL GAZI *v.* EMPEROR, I. L. R., 34 Cal. 686.

2. UNSOUNDNESS OF MIND — *Voluntary Drunkenness.*] Under s. 84 of the Penal Code, unsoundness of mind producing incapacity to know the nature of the act committed, or that it is wrong or contrary to law, is a defence to a criminal charge, but, by s. 85 of that Code, such incapacity is no defence if produced by voluntary drunkenness. If, however, voluntary drunkenness causes a disease which produces such incapacity, then s. 84 applies, though the disease may be of a temporary nature.—EMPEROR *v.* BHELEKA AHAM, I. L. R., 29 Cal. 493.

Using as Genuine a Forged Document—

USING AS GENUINE A FORGED DOCUMENT —*Handing over of a forged rent-receipt by accused, in the course of a criminal trial, to his mukhtear — Examination by the mukhtear of a witness thereon—Receipt filed by the Magistrate with the record though*

Using as Genuine a Forged Document (*contd.*)—

not proved—Grant of sanction to landlord's agent not a party to the criminal case—Sanction by successor of Magistrate before whom the forged document was used—Penal Code (Act XLV. of 1860), s. 471—Criminal Procedure Code (Act V. of 1898), s. 195.] Where the accused, during the course of a criminal trial against him of rioting and theft of crops, handed over to his mukhtear a forged rent-receipt, bearing a counterfeit seal of the landlord, to prove his possession, and the latter put the same to a witness and questioned to him as to its genuineness, but, on the witness alleging that it was a forgery, the trying Magistrate took it, initialled it and placed it on the record: *Held*, that there was a user of the document within s. 471 of the Penal Code. *Ambica Prasad Singh* v. *Emperor*, I. L. R., 35 Cal. 820, distinguished. A sanction granted to the agent of the landlord whose seal was forged is valid, though neither was a party to the criminal case in which the forged document was used. A sanction granted by the successor of a Magistrate before whom the forged document was used is good in law.—RATI JHA *v.* EMPEROR, I. L. R., 39 Cal. 463.

V.

Vakil—

VAKIL—*Letters Patent, 1866, para. 8—Removal of a vakil from the roll for reasonable cause—A conviction under s. 471 of the Penal Code.*] A vakil of the High Court was convicted, under s. 471 of the Penal Code, of fraudulently using as genuine a document which he knew to be forged. This was affirmed on appeal, when the punishment to which he had been sentenced was reduced to two years. The High Court, while not allowing the propriety of the conviction and sentence to be questioned, had considered whether his culpability was such as to disqualify him for his profession, and had decided in the affirmative, removing him from the roll, under para. 8 of the Letters Patent, 1866. *Held* that, in the present case, the conviction, followed by the sentence, was sufficient, without further inquiry, to justify the High Court in making that order. The appellant could not be allowed to have an indirect appeal against the judgment of the Sessions Judge confirmed by the High Court. The judgment of Lord Mansfield in *ex parte Brounsall* (2 Cowper's Rep., 1778, p. 829) referred to as well explaining the disqualification of a member of the legal profession that attends such a conviction and sentence. *In re Wear* (L. R., 2 Q. B., 1893, p. 439), where the Court of Appeal looked to see what was the nature of the offence, and would not, as a matter

Vakil (*contd.*)—

of course, strike a solicitor off the roll because he had been convicted, distinguished from the present case. *In re Durga Charan* (I. L. R., 7 All. 290) dealt with under s. 12 of Act XVIII. of 1879, referred to as a case where the nature of the offence admitted of further inquiry and also distinguished. In regard to the finality of the judgment of the High Court in deciding the appeal from the conviction and sentence, *In re the Petition of Macrea* (I. L. R., 18 All. 174) was referred to.—*In re* RAJENDRO NATH MUKERJI, I. L R., 22 All. 49.

Verdict of Jury—

VERDICT OF JURY — *Jury—Verdict of Jury, disagreement with by Judge—Reference by High Court—Evidence, Consideration of—Code of Criminal Procedure (Act V. of 1898) ss. 307 and 451—Penal Code (Act XLV. of 1860), ss. 147, 149 325, 343—Assam Labour and Emigration Act (VI. of 1901), s. 210.*] S. 307 of the Code of Criminal Procedure requires that a High Court in dealing with a case referred under it, shall consider the entire evidence on the case, and next, after giving due weight to the opinions of the Sessions Judge and the Jury shall deliver judgment. The High Court in such a case is not bound to accept the opinion of the Jury if it is not shown to be perverse or clearly or manifestly wrong. Without considering the entire evidence the High Court could not be in a proper position to give due weight to the opinions of the Sessions Judge and of the Jury.—EMPEROR *v.* LYALL, I. L. R., 29 Cal. 128.

Village Chaukidar—

VILLAGE CHAUKIDAR—*Is he a police officer—Person unlawfully arrested by a private person, and made over to village-chaukidar—Rescue from custody of village chaukidar—Lawful custody—Penal Code (Act XLV. of 1860), s. 225—Criminal Procedure Code (Act V. of 1898), s. 59—Village Chaukidari Amendment Act, 1870 (Ben. Act I. of 1892), s. 13.*] S, who was alleged to have committed theft, was unlawfully arrested by a private person, and made over to the custody of the village chaukidar. The theft was not committed in view of such private person. S was rescued from the custody of the village-chaukidar by the accused. The accused were convicted under s 225 of the Penal Code, and sentenced each to two months' rigorous imprisonment. *Held* that a village-chaukidar cannot be properly regarded as a police-officer within the terms of s. 59 of the Criminal Procedure Code, and that S, therefore, was not in lawful custody at the time of his rescue. Conviction and sentence set aside.—KALAI *v.* KALU CHOWKIDAR, I. L. R., 27 Cal. 366.

W.

Warrant—

1. WARRANT—*Magistrate, Jurisdiction of—Reference of case for trial of offence by Subordinate Court—Power of District Magistrate to issue warrants for arrest of other persons concerned in that offence.*] Where cognizance was taken of an offence on a police-report, and the case was made over to a Subordinate Magistrate, *held* that, so long as the case connected with that offence remained with the Subordinate Magistrate, no other Magistrate was competent to deal with it, and that applications for warrants against other persons concerned in that offence should be made to the Magistrate before whom the case was, and to no other Magistrate —GOLAPDY SHEIKH *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 979.

2. WARRANT—*Witness—Rescuing from lawful custody—Warrant against a witness issued in the first instance without recording reasons in writing—Legality of warrant and arrest—Penal Code (Act XLV. of 1860) s. 225 B—Criminal Procedure Code (Act V. of 1898) s. 90, Sch. V., Form VII.—Practice.*] The issue of a warrant of arrest by a Magistrate against a witness in the first instance, drawn up in the terms of Form VII of Schedule V. of the Criminal Procedure Code, but without recording his reasons in writing therefor, as required by s. 90 of the Code, is illegal ; and a person rescuing the witness arrested on such warrant is not guilty of an offence under s. 225 B of the Penal Code.—SUKHESWAR PHUKAN *v.* EMPEROR, I. L. R., 38 Cal. 789.

Whipping—

1. WHIPPING—*Act (III. of 1895), s. 4—Dacoity — Penal Code (Act XLV. of 1860), s. 395—Previous conviction — Sentence.*] Under s. 4 of the Whipping Act, 1895, a sentence of whipping in addition to imprisonment is not legal in the case of a conviction of dacoity which was committed prior to the previous conviction of a similar offence. *Reg.* v. *Surya* (3 B. H. C. R. 38) and *Reg* v. *Kusa* (7 B. H. C. R. 70) followed.—KING-EMPEROR *v.* BABYA BHIVA, I. L. R., 25 Bom. 712.

2. WHIPPING—*Act (IV. of 1909), s. 3—Criminal Procedure Code (Act V. of 1898), s. 565—Indian Penal Code (Act XLV. of 1860), s. 7—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order.*] S. 565 of the Criminal Procedure Code (Act V. of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court, instead of passing that sentence, passes a sentence of whipping.—EMPEROR *v.* FULJI DITYA, I. L. R., 35 Bom. 137.

Withdrawal of Money, attempt at dishonest—

WITHDRAWAL OF MONEY, ATTEMPT AT DISHONEST — *Mortgage — Dishonestly or fraudulently preventing debt being available for creditors—Debt—Attempt—Application to withdraw money paid into Court —Penal Code (Act XLV. of 1860), ss. 422 and 511.*] The petitioners mortgaged their property and under the terms of the agreement certain persons were appointed managers of the estate under certain conditions in regard to payment of the moneys realized by them. In execution of a decree obtained by the managers in a suit brought in the names of the petitioners a certain *putni taluk* was sold for Rs. 3,000. The debtor settled with the petitioners that, on payment of Rs. 1,000, the sale was to be set aside. The money was paid into Court, and an application was made by the petitioners for the withdrawal of this money. The Court, however, made no order on this application. The petitioners were convicted of an attempt to commit an offence under s. 422 of the Penal Code. *Held* that, having regard to the relation between the petitioners and their managers at whose instance the proceedings were taken, it could not properly be said that an attempt to commit an offence under s. 422 of the Penal Code was made. That the interference of the petitioners and their application to obtain the money paid into Court might have been breaches of their contract with the mortgagees, but such conduct could not necessarily be regarded as dishonest or fraudulent so as to render them liable to punishment. Their attempt to get this money was more to put an end to the management than to prevent the money from being available for payment of their debt under the mortgage. *Nobin Chunder Mudduck* (22 W. R. Cr. 64) referred to.—HARA KUMARY CHOWDHURANI *v.* R. SAVI, I. L. R., 28 Cal. 314.

Witness—

1. WITNESS—*Witnesses, Statements of—Police investigation—Power of Magistrate to record statements not voluntarily made—Duty of police when fear of witnesses being gained over—Magistrate, Bench of—Powers of member to act independently—Murder—Suspicion—Criminal Procedure Code (Act V. of 1898), ss. 15, 16, 162, 164, and 307—Penal Code (Act XLV. of 1860), s. 302.*] The accused was suspected of having killed his wife. The police-officer investigating the case sent him to the Sub-divisional Magistrate, who, considering the case as one of suspicion only, released the accused on bail. After the *post mortem* the investi-

Witness (*contd.*)—

gation was renewed, and three days after the release of the accused the police-officer sent a number of witnesses to an Honorary Magistrate, not having jurisdiction to try the case, to have their statements recorded under s. 164 of the Criminal Procedure Code on the ground that there was every chance of their being gained over. Their statements, as also that of the accused, were recorded by that Magistrate. *Held*, that the police-officer had no authority to place the witnesses before the Honorary Magistrate, as they did not appear voluntarily. *Held*, also, that the Honorary Magistrate being a member of an independent Bench exercising third class powers could not, unless he was specially authorized, act independently, that is to say, when not sitting on the Bench. *Held*, further, that the object of s. 162 of the Criminal Procedure Code would be defeated if, while a a police-officer cannot himself record any statement made to him by a person under examination, he can do so by causing the persons to appear before a local Magistrate not competent to deal with the case and to get their statements recorded by him. If the police-officer had reasons to believe that the witnesses were likely to be gained over by the accused or his party, the police-officer should have sent in the accused and the witnesses to the Magistrate having jurisdiction without delay.—EMPEROR *v.* NURI SHEIKH, I. L. R., 29 Cal. 483.

2. WITNESS—*Criminal Procedure Code (Act V. of 1898), ss. 257, 177, 110—Security for good behaviour—Witness—Magistrate—Summons—Refusal to summon—Procedure.*] S. 257 of the Criminal Procedure Code (Act V. of 1898), is imperative in its terms. It leaves to a Magistrate no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice; such ground, however, must be recorded by him in writing. The discretionary power of refusing to summon any particular witness is vested in the Magistrate, but the order of refusal must be such as to show in writing the ground of refusal as applied to each individual. — EMPEROR *v.* PURSHOTTAM KARA, EMPEROR *v.* DHARAMSHI GHELA, I. L. R., 26 Bom. 418.

3. WITNESSES — *Process — Magistrate—Extraordinary jurisdiction of the High Court — Prejudice — Criminal Procedure Code (Act V. of 1898) s. 145—Charter Act (24 and 25 Vic. c. 104) s. 15.*] It is not obligatory on a Magistrate to assist parties

Witness (*contd.*)—

to a proceeding under s. 145 of the Criminal Procedure Code in producing their witnesses, and they cannot claim as a matter of right that process should be issued by the Court to enable them to bring forward their evidence. *Hurendro Narain Singh* v. *Bhobani Prea Baruani*, I. L. R. 11 Cal. 762, *Ram Chandra Das* v. *Monohar Roy* I. L. R., 21 Cal. 29, *Madhab Chandra Tanti* v. *Martin*, I. L. R., 30 Cal. 508 note, *Surjya Kanta Acharjee* v. *Hem Chunder Chowdhry*, I. L. R., 30 Cal. 508, and *Radhanath Sing* v. *Mangal Gareri*, 2 C. L. J. 286 note dissented from. *Manmatha Nath Mitter* v. *Baroda Prosad Roy*, I. L. R., 31 Cal. 685 referred to. The powers of superintendence under s. 15 of the Charter Act should, in cases under s. 145 of the Criminal Procedure Code, be exercised with caution; and the Court ought not to interfere, unless satisfied that the party has been prejudiced by the proceedings in the Court below. *Sukh Lal Sheikh* v. *Tara Chand Ta*, 9 C. W. N. 1046, followed. Where a party had obtained summonses upon his witnesses, and on the failure of some of them to appear, applied for fresh summonses against them, which the Magistrate refused, and where it was further alleged that he had refused to allow a witness to prove certain documents: *Held*, that there was nothing to show that the absent witnesses could not have been made to attend without the assistance of the Court, nor whether they were material witnesses nor that any questions were put to the witness, which were improperly disallowed, and that the party was not, therefore, shown to have been prejudiced.—TARAPADA BISWAS *v.* NURUL HUQ, I. L. R., 32 Cal. 1093.

4. WITNESS—*Criminal Procedure Code (Act V of 1898), s. 288—Statement of witness before committing Magistrate treated as evidence at trial before Court of Session—"Evidence duly taken."*] Under s. 288 of the Code of Criminal Procedure the Court is not restricted to admitting the evidence of a witness duly taken before the committing Magistrate merely for the purpose of contradicting that witness when he is called as a witness at the Sessions Court. The section is intended to enable the Court to read the previous evidence as substantive evidence in the case, at the trial where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. — QUEEN-EMPRESS *v.* DORASAMI AYYAR, I. L. R., 24 Mad. 414.

5. WITNESS—*Statement of witness taken by the police during investigation and recorded in the Special Diary—Copies of*

Witness (*contd*)—

such statements when to be given to the accused—Criminal Procedure Code (Act V. of 1898), ss. 161 and 162 — Practice.] Where the trying Magistrate, at the instance of the accused, called for the statements of certain prosecution witnesses recorded by the police during their investigation in the special diary and then returned them to the police without recording an order that he did not think it expedient in the interests of Justice to furnish the accused with a copy, and also disallowed an application to summon a defence witness. *Held*, that the Sessions Judge should re-hear the appeal and examine this witness, and send for the statements recorded by the police and, if he found anything in them of advantge to the accused, that he should also summon the witnesses who made them and allow cross-examination after supplying the accused with a copy of their statements.—SALT *v.* EMPEROR, I. L. R., 36 Cal. 560.

6. WITNESS—*Magistrate—Duty of Magistrate to enforce attendance of witnesses after summonses have once been issued against them—Power of second or third class Magistrate to pass sentence and then to refer the case to a superior Court to bind down the accused — Criminal Procedure Code (Act V. of 1898) ss. 257, 349.*] Where a Magistrate has once issued summonses for the attendance of witnesses, he is bound to have the processes enforced before disposing of the case. A Magistrate of the second or third class, if of opinion that the accused should be bound down under s. 106 of the Criminal Procedure Code, must refer the whole case to a superior Magistrate without passing any part of the sentence himself.—ROHIMUDDI HOWLADAR *v.* EMPEROR, I. L. R., 35 Cal. 1093.

Workman's Breach of Contract—

1. WORKMAN'S BREACH OF CONTRACT—*Workman's Breach of Contract Act (XIII. of 1859), ss. 1, 2—Failure to comply with order of Court—Criminal Procedure Code (Act V. of 1898), s. 4 (o)—"Offence."*] The offence created by the Workman's Breach of Contract Act (XIII. of 1859) is not the neglect or refusal of the workman to perform his contract, but the failure on his part to comply with an order made by the Magistrate directing the workman to repay the money advanced or perform the contract.—KING-EMPEROR *v.* TAKASI NUKAYYA, I. L. R., 24 Mad. 660.

2. WORKMAN'S BREACH OF CONTRACT—*Workman's Breach of Contract Act (XIII. of 1859)—Inquiry under the Act—Summary trial not permissible.*] An offence under the Workman's Breach of Contract Act, 1859, cannot be tried summarily. *Emperor v. Dhondu Krishna*, 33 Bom. 22, followed. —EMPEROR *v.* BALU, I. L. R., 33 Bom. 25.

Workman's Breach of Contract (*ctd.*)

Wrongful Confinement—

1. WRONGFUL CONFINEMENT — *Prisoner in Jail—Confinement, illegal in cell—Penal Code (Act XLV. of 1860) ss. 79, 114 and 342.*] If a prisoner is confined in a particular part of a prison without legal authority, that confinement is a wrongful one, notwithstanding that his confinement in the prison at large may be legal.—BAISTAB CHARAN SHAHA *v.* EMPEROR, I. L. R., 30 Cal. 95.

2. WRONGFUL CONFINEMENT—An officer arresting a judgment-debtor, under a warrant which directs him to produce the judgment-debtor when arrested before the Court with all convenient speed, is not guilty of wrongful confinement if, having effected the arrest when the Court is not sitting, he confines him in the house of the judgment-creditor. His duty is to produce the judgment-debtor at the next sitting of the Court, and, until he so produces him, he is responsible for his safe custody. —EMPEROR *v.* SAMUEL, I. L. R., 30 Mad. 179.

Wrongful Restraint—

WRONGFUL RESTRAINT—*Right of way, interference with — Order to remove obstruction, legality of—Indian Penal Code (Act XLV. of 1860), s. $\frac{341}{114}$, Criminal Procedure Code (Act V. of 1898), s. 522.*] *Held* by the Full Bench, (AMEER ALI *J.* AND BRETT, *J.*, dissenting), that a Magistrate, while convicting an accused under ss. $\frac{341}{114}$, of the Penal Code, for wrongfully restraining a person by the erection of a hut or by any similar act of obstruction, has no jurisdiction to order that the hut or other means of obstruction should be removed. *Debendra Chandra Chowdhury* v. *Mohini Mohun Chowdhry* (5 C. W. N. 432), overruled. *Held* further by the Full Bench, that, whereas in this case criminal force had been used by the accused to the complainant when the latter objected to the obstruction, which interferred with his right of way over a path, and this constituted the offence of wrongful restraint, of which offence the accused had been convicted, an order for the removal of the obstruction could be passed under s. 522 of the Criminal Procedure Code.—MOHINI MOHAN CHOWDHRY *v.* HARENDRA CHANDRA CHOWDHRY, I. L. R., 31 Cal. 691.

Y.

Youthful Offender—

YOUTHFUL OFFENDER — *Reformatory Schools Act (VIII. of 1897), ss. 8, 9, 11, 13,*

Youthful Offender (*contd.*)—

16—Periods of detention allowable under the Act—Finding by Magistrate as to age—Form of order—Exact period of detention.] A District Magistrate before whom the case of a youthful offender came, under the provisions of s. 9 of the Reformatory Schools Act, 1897, found the accused to be thirteen years of age, sentenced him to six months' rigorous imprisonment, and directed that, in lieu of undergoing that sentence, he should be detained in a Reformatory School for a period of five years, unless he should attain the age of eighteen years at an earlier date. *Held* that the order was wrong, inasmuch as it failed to fix the exact period of detention. *Semble*, that in some cases it may not be necessary to ascertain the exact age of the offender. If he be not over fifteen, a period of three years may be rightly fixed; if not over eleven, a period of seven years may be fixed without further

Youthful Offender (*contd.*)—

enquiry. But in cases in which enquiry is necessary in order to fix the period, as when the offender is over eleven, and the Magistrate wishes to make the period as long as possible, he must find, as well as he can, the exact age of the offender, and is not at liberty to leave the decision of the question to the Reformatory officials. The effect of the notification published by Government regulating the periods for which youthful offenders may be sent to Reformatory Schools in the Madras Presidency, is to fix a minimum period of five years for all cases in which such a period is legally possible; namely, in all cases where the offender is not over thirteen at the date of conviction. It was not intended to prevent the Magistrate from fixing a period short of five years, but not short of three years, in the case of a boy over thirteen.—QUEEN-EMPRESS *v.* RAMA, I. L. R., 24 Mad. 13.